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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 72

J. D. SHELLEY, ETHEL LEE SHELLEY, HIS WIFE,
AND JOSEPHINE FITZGERALD, PETITIONERS,

vs.

LOUIS KRAEMER AND FERN W. KRAEMER, HIS
WIFE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF MISSOURI

PETITION FOR CERTIORARI FILED APRIL 21, 1947.

CERTIORARI GRANTED JUNE 23, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No.

J. D. SHELLEY AND ETHEL LEE SHELLEY, HIS
WIFE, AND JOSEPHINE FITZGERALD, PETI-
TIONERS,

vs.

LOUIS KRAEMER AND FERN E. KRAEMER, HIS
WIFE

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF MISSOURI

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**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,
MISSOURI**

Wm. W. Koerner, Judge Div. No. 3

No. 91283 In Equity

**FERN E. KRAEMER and LOUIS W. KRAEMER, her husband,
Plaintiffs,**

vs.

**J. D. SHELLEY and ETHEL LEE SHELLEY, his wife and
Josephine Fitzgerald, Defendants.**

STIPULATION AS TO FACTS IN TRANSCRIPT OF THE RECORD

For the purpose of the transcript of record on appeal it is stipulated by and between counsel for plaintiffs and defendants that the following are facts and were in evidence on the trial of the case:

1. The plaintiffs own the property known and numbered as 3542 Labadie avenue, and are the ultimate grantees and successors in title to Emma G. Thomson and William I. Thomson, the chain of title being as follows:

Book 1376, page 26, from Lennox to W. I. Thomson.

Book 2360, page 483, from W. I. Thomson to Hoppe.

Book 2377, page 75, from Hoppe to Emma Thomson.

Probate estate No. 58427, by will of Emma Thomson to William I. Thomson.

Book 4304, page 450, William I. Thomson to Roy Thomson

Book 4461, page 387, Roy Thomson to William I. Thomson.

Probate estate No. 66265 by descent from William I. Thomson to Fern Kraemer.

Book 5183, page 489, Fern Kraemer to Hazel Chapman.

Book 5183, page 490, Hazel Chapman to Louis W. Kraemer and Fern Kraemer.

1a. The defendants own and occupy property known and numbered as 4600 Labadie avenue, are the ultimate grantees

and successors in title to one Samuel Werner, and the chain of title from Werner to the defendants is as follows:

Book 2015, page 221, Steinlege to Samuel Werner.

Book 2424, page 402, Samuel Werner to Samtine Real Estate Co.

Book 3706, page 275, Samtine Real Estate Co. to Roberson.

[fol. 4] Book 3645, page 518, Roberson to Barnes.

Book 4379, page 291, Barnes to Sohlmann.

Book 6347, page 455, Sohlman to Paulis.

Daily No. 124 dated 9/10/45, deed, Paulis to Geraldine Fitzgerald.

1b. Defendant Geraldine Fitzgerald deeded to the defendants Shelley on September 11, 1945.

1c. The restrictive covenant was signed by S. Werner.

1d. The property belonging to the plaintiffs and the property belonging to the defendants are both located in city blocks 3710b and 3711b of the City of St. Louis, Missouri.

1e. When this restrictive agreement was signed there were 39 owners of land in the district sought to be restricted, being city blocks 3710b and 3711b, who owned 57 parcels of land. 30 landowners owning 47 parcels of land signed the restriction agreement. The total frontage on Labadie avenue comprising the district sought to be restricted was 1569 feet, 8 inches; and the property owned by the 30 owners signing the agreement had a frontage totalling 1245 feet, 4 $\frac{3}{4}$ inches. 9 owners of 10 parcels, comprising a total frontage of 324 feet, 3 $\frac{1}{4}$ inches, did not sign the agreement.

2. It is further stipulated and agreed that the following finding of fact by the Court may be considered as substantiated by the evidence in regard to the matters therein stated, to-wit:

"6. On the South side of Labadie avenue, in the immediate vicinity of 4600 Labadie, the houses, numbered from east to west, the race and length of their tenancy of their respective occupants, and whether or not the owners in 1911 signed the restriction, are as shown by the following table.

[fol. 5]

House Number	Signed Restriction	Occupancy
4556	No	White, within memory of witnesses
4560	No	White, within memory of witnesses
4562	No	Negro for 23 years
4600	Yes "S. Werner"	White to October 9, 1945
4604	Yes	White, within memory of witnesses
4606	No	Negro to 1944, then white
4608	No	Negro since 1882
4610	No	Negro 30 years or more
4614	No	Negro at least 23 years

Those numbers that have been occupied by Negroes have been occupied by successive owners and tenants, some moving out and others moving in. No property in the district, other than as shown in the foregoing table, is now occupied by Negroes or ever has been, so far as the evidence shows."

3. It is further stipulated and agreed that said restriction agreement does not contain the lot number of any parcel or lot of ground mentioned therein, nor does it contain any reference to any other recorded document wherein such information may be found.

4. It is further stipulated and agreed that, at the time said restriction agreement was signed, the evidence did not show that two of the persons signing it had any property, or any interest therein, located in said city blocks mentioned therein.

5. It is further stipulated and agreed that the equivalent of twenty-four 25-foot lots, fronting on the west line of Taylor avenue and situated in the east ends of City Blocks 3710B and 3711B, are not restricted; and that said lots are separated from other lots in the east end of said blocks which are restricted by an alley fifteen feet wide.

Transcript of the Record

AMENDED PETITION—October 18, 1945

1. Plaintiffs state that they are the owners of property located in City Blocks 3710b and 3711b, more specifically described as 4532 Labadie avenue, of the City of St. Louis, State of Missouri; that Fern E. Kraemer acquired the title to said property by descent from William I. Thomson, who took by deed from Roy H. Thomson, and who died intestate in 1927.

2. Plaintiffs further state that they are successors in title to William I. Thomson and Emma Thomson who were signatories on a certain instrument dated the 16th day of February, 1911, and are successors to two of the parties of the first part mentioned in said agreement, and that their authority to prosecute this action is based upon the provisions of that instrument.

3. Plaintiffs state that said instrument was filed of record in the office of Recorder of Deeds of St. Louis on the 17th day of February, 1911, and is recorded in Book 2400 on page 488 of said records.

4. Plaintiffs state that said instrument is a "Restriction Agreement", the purpose of which and the legal effect of which is to bind the signatories, their heirs, assigns, legal representatives and successors in title to restrict the property owned by each of said signatories against sale to, or use or occupancy by people not wholly of the Caucasian race and to prohibit by the agreement of the signatories the sale to, leasing or renting to, or transferring by any means whatever, said property to persons of the Negro or Mongolian race.

[fol. 7] 5. Plaintiffs state that said instrument is also signed by one Samuel Werner; that said Samuel Werner was, on the 16th day of February, 1911, and for sometime thereafter, the legal title holder of a certain piece of property in City Block 3711b of the City of St. Louis, being more specifically described as 4600 Labadie avenue.

6. Plaintiffs state that the above mentioned restriction agreement, among other things, contained the agreement

of the parties thereto that none of the property in said city blocks, 3710b and 3711b, by them owned should be sold, conveyed, leased, or rented to persons not wholly of the Caucasian race, or to persons of the Negro or Mongolian race; that none of the parties thereto or their successors should deliver possession to or permit to be occupied by any of the said parcels of land belonging to the parties of the first part in said agreement, a Negro or Negroes; that the signatories thereto agreed that their mutual promises in said agreement contained should be binding on the respective heirs, assigns, legal representatives and successors of such signatories.

7. Plaintiffs state that said agreement provided that it should remain and be in force and effect for a period of 50 years from the date thereof, unless sooner terminated by writing executed and acknowledged by the owners in fee of all of the property therein included; that such agreement has not been so terminated in writing or otherwise and is still in full force and effect.

8. Plaintiffs state that it was intended by the parties, and it was expressly agreed, that such agreement and such restrictions on their property should attach to and run with each of the parcels of land belonging to the parties and described in said agreement, and that such agreements between the parties were covenants and did run with the land and do now run with the land; that the signatures of the parties thereto were duly acknowledged by a notary public and that said agreement was duly recorded in the office of recorder of deeds of the City of St. Louis, state of Missouri.

[fol. 8] 9. Plaintiffs state that Samuel Werner, signatory to the agreement aforesaid and owner of the property described as 4600 Labadie avenue, did, in the month of April, 1911, transfer said parcel to Samtine Real Estate Company; that thereafter, on September 6, 1922, Samtine Real Estate Company conveyed said property to Frank R. Roberson; that thereafter, on September 13, 1922, the said Roberson conveyed the said property to Pearl G. Barnes; that thereafter, on February 1, 1926, the said Pearl G. Barnes conveyed the said property to John and Mathilda Sohlmann; that thereafter, on May 18, 1945, the said John and Mathilda Sohlmann conveyed the said prop-

erty to Oscar Paulis and Lorraine Paulis; that thereafter, on September 10, 1945, the said Oscar Paulis and Lorraine Paulis conveyed said property to Josephine Fitzgerald, defendant herein; that thereafter, on September 11, 1945, defendant Josephine Fitzgerald conveyed said property to J. D. Shelley, defendant herein, and Ethel Shelley, his wife, defendant herein.

10. Plaintiffs state that J. D. Shelley and Ethel Shelley, his wife, defendants herein, are claiming to be the owners of said property and are claiming to have a deed to said property and are exercising acts of ownership over the said property and are collecting rents through their agent for a portion of said property.

11. Plaintiffs state that defendants J. D. Shelley and Ethel Shelley, his wife, are Negroes and are not wholly of the Caucasian race.

12. Plaintiffs state that defendants J. D. Shelley and Ethel Shelley, his wife, are threatening to move their belongings into said property known as 4600 Labadie avenue, and have indicated their intention to take up their residence in said property, all in violation of said restriction agreement aforementioned.

13. Plaintiffs state that the deed of conveyance to defendants J. D. Shelley and Ethel Shelley is in violation of said restriction agreement and is therefore void, and that defendants Shelley have no right at law to acquire the title to or reside in, or take possession of said property,

[fol. 9] 14. Plaintiffs state that the defendants Shelley are the ultimate grantees or assigns, or assigns and successors in title, to Samuel Werner, signatory to the restriction agreement aforementioned:

15. Plaintiffs state that the ownership or occupancy or both of the defendants Shelley of said property is in violation of the terms of said restriction agreement and that as a direct result thereof plaintiffs will suffer irreparable injury and irremediable damages to their property; that unless defendants Shelley be restrained from owning or occupying, and both owning and occupying, said property, plaintiffs will in the future suffer irreparable injury and irremediable damage to their property; that unless de-

defendant Josphine Fitzgerald be restrained from conveying, during the term of the restriction agreement aforesaid, said property to persons not wholly of the Caucasian race or to persons of the Negro or Mongolian race, plaintiffs will suffer irreparable injury and irremediable damages to their property.

16. Plaintiffs state that they have no adequate remedy at law.

17. Plaintiffs state they have filed their surety bond executed by the New Amsterdam Casualty Company, a surety corporation, as surety.

Wherefore, plaintiffs pray the Court for relief as follows:

a. That this honorable Court forthwith issue its temporary restraining order restraining the defendants herein, J. D. Shelley and Ethel Shelley, his wife, from taking possession of or moving their belongings into or residing in said property known as 4600 Labadie avenue.

b. That this honorable Court forthwith issue its order commanding defendants to show cause, if any they have, why a temporary injunction should not be issued restraining and enjoining the defendants Shelley from entering into, or taking possession of, or residing in said property; [fol. 10] that this Court issue its order commanding defendant Josphine Fitzgerald to show cause, if any she has, why a temporary injunction should not be issued restraining and enjoining her from conveying during the period of the restriction agreement aforesaid, said property known as 4600 Labadie avenue to persons not wholly of the Caucasian race, or to persons of the Negro or Mongolian races.

c. That upon final hearing herein this honorable Court make permanent and perpetual its injunction restraining and enjoining defendants Shelley herein from taking possession of, or entering into, or residing in, the property known as 4600 Labadie avenue; that the defendant Josephine Fitzgerald be restrained and enjoined from conveying during the period while the restriction agreement aforesaid remains in force and effect, said property in violation of the agreement aforesaid.

d. That the title to said property be divested out of defendants J. D. Shelley and Ethel Shelley, his wife, and

vested in their immediate grantor or grantors, or in such persons or persons wholly of the Caucasian race, and not of the Negro or Mongolian race, as the Court may determine.

e. That said restriction agreement above mentioned be declared by the Court to be valid and in full force and effect.

f. That the Court make such further orders and decrees as to the Court seem just and proper.

g. That the defendants have judgment for their costs.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER—
OCTOBER 9, 1945

Now at this day come the plaintiffs by their attorney and present to the Court a verified petition this day filed, praying among other things for the issuance of a temporary [fol. 11] restraining order and a temporary injunction, and the Court having seen and examined the same, and being sufficiently advised thereof, upon the motion of attorney for the plaintiffs doth order that the defendants be and appear in this Court and in Division #3 thereof on Thursday the 11th day of October, 1945, at 10 a. m., and then and there to show cause, if any there be, why a temporary injunction should not be granted as prayed for in plaintiffs' petition.

It is further ordered that, until the hearing of said motion and order herein, conditioned upon the plaintiffs giving a good and sufficient bond in the penal sum of \$500, with surety to be approved by the Court, judge or clerk thereof in vacation, which said bond in the penal sum of \$500 with New Amsterdam Casualty Company as surety is now approved and ordered filed, the defendants J. D. Shelley and Ethel Shelley, his wife, do absolutely desist and refrain from taking possession of, or entering into, the property known as 4600 Labadie avenue.

And it is further ordered that a copy of this order be served on each defendant herein named at least 24 hours before the time fixed for hearing the motion as aforesaid.

Dated at St. Louis, Missouri, this 9th day of October, 1945.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

AMENDED RETURN TO ORDER TO SHOW CAUSE AND ANSWER—
NOVEMBER 1, 1945

Now, this day, come the defendants herein and for their return to the order to show cause, and for answer to the petition of the plaintiffs, state the following:

1. Defendants J. D. Shelley and Ethel Lee Shelley admit that they are the owners of property located on the south side of Labadie avenue, between Taylor avenue and Cora [fol. 12] Avenue, in the City of St. Louis, Missouri, a known and numbered as 4600 Labadie avenue; and admit that they acquired the same from the defendant, Josephine Fitzgerald, for a good and valuable consideration; that they are exercising the rights of ownership in and over said property and are now, and were at and prior to the time when this action was brought occupying said property as their home; but all of the defendants herein aver that the sale of said property to the defendants Shelley and wife by the defendant Josephine Fitzgerald was in every way valid and lawful, and was in keeping with the property rights of all of said defendants in reference to said property, its transfer and ownership, and according to law.

2. Defendants state that they have no knowledge of the ownership of property claimed by the plaintiffs in city blocks 3710B and 3711B, and therefore neither affirm or deny said claims.

3. Defendants further state that they have no knowledge of the ownership of other parcels of property located in said City blocks as set forth in the plaintiff's petition, and they therefore neither admit nor deny said allegations.

4. Defendants further state that they had no knowledge of the existence of the restrictive agreement pleaded by the plaintiffs prior to the sale and transfer of said property to the defendants J. D. Shelley and Ethel Lee Shelley; that they relied upon the fact which was common knowledge, that for more than fifteen years Negroes or colored people had owned and occupied as homes several parcels of property in the block and upon the street where the property in question in this suit is located; that their knowledge of

the existence of said restrictive agreement against the sale to and occupancy by Negroes of the property located in the city blocks aforesaid has been learned since the purchase and transfer of their said property in the month of September, 1945.

5. Defendants further state that said restrictive agreement [fol. 13] is and was void and of no effect for the following reasons, to-wit:

(a) Said agreement is contrary to the provisions of section 42 of title 8 of the United States code, which said section reads as follows:

"Section 42. Property rights of citizens. All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

(b) That all of the defendants are citizens of the United States and entitled to enjoy the above rights in reference to the ownership of real property in Missouri as set forth in said section; that there is no statutory law in Missouri in any manner restricting the sale of real property to white citizens, and that no court in Missouri has ever decided a case in which the right to own or use real property as a place of residence has ever been denied to white citizens of this state by reason of any provision in any private contract, or otherwise, but that the free uses of property as homes are accorded to all white citizens in this state, and said rights are upheld by the courts in this state save only as to restrictions regulating the location and character of buildings, and the uses thereof, such as conducting rooming houses, slaughter houses, soap factories, distilleries, livery stables, tanneries, machine shops, liquor saloons, and the like, and that said restrictions have always been enforced by the courts of Missouri against all owners and tenants of property so restricted, without regard to race or color.

6. Defendants further state that said restrictive agreement is void because it violates rights conferred on these defendants by section 41 of title 8 of the United States code, which said section provides, in part, as follows:

[fol. 14] "Section 41. Equal rights under the law. All persons within the jurisdiction of the United States

shall have the same right in every state and territory to make and enforce contracts, . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Defendants further state that said restrictive contract is contrary to the provisions of said section 41, and deprives these defendants of the right to make and enforce contracts which the white citizens in Missouri enjoy, and to the protection of laws regarding the ownership and use of property which white citizens of this state have applied to similar transactions; that said restrictive contract, if enforced and upheld, will abridge the rights of the defendant Josephine Fitzgerald which are enjoyed by other white citizens of Missouri with regard to the making and enforcing of contracts and the full and equal benefit of all laws and proceedings for the security of property as is enjoyed in this state by other members of her race.

7. That said restrictive agreement is void because the same is contrary to the provisions of section 1 of the 14th amendment to the constitution of the United States, as declared by the federal court in *Gandolfa v. Hartman*, 49 Fed. 181, which said case has never been overruled; and is contrary to Section 10 of the bill of rights as contained in the constitution of Missouri, article 1, section 10.

7a. That said restrictive agreement is void for the reason that the description of the property mentioned therein [fol. 15] is defective and so indefinite that it does not enable the defendants and others, not parties to said agreement, to know what property is attempted to be restricted thereby, and fails to impart any notice to these defendants.

8. Defendants further state that the plaintiffs seek action by the state of ~~Missouri~~ in this cause by asking the courts of this state to enforce a contract which is contrary to the provisions of the statutes and constitutional provisions aforesaid; that, if this court upholds and enforces said restrictive agreement, its action will constitute state action, contrary to the provisions of section 1 of the 14th amendment to the constitution of the United States, which forbids

any state to enforce any law which shall abridge the privileges or immunities of citizens of the United States, and forbids any state to deprive any person of life, liberty, or property, without due process of law, or the denial to any person within the jurisdiction of a state the equal protection of the laws; that the court upholding an enforcement of said restrictive agreement by this will deprive these defendants of their said property without due process of law, and will deny to them the equal protection of the laws, within the meaning of said 14th amendment, and of said article 10 of the constitution of Missouri, by action of the state of Missouri.

9. Defendants further state that, according to the records of the recorder of deeds of the City of St. Louis, said restrictive agreement was entered into and placed of record on the 17th day of February, 1911; that, notwithstanding the existence of said agreement, members of the Negro race have owned and occupied as residences lots or parcels of property located in said city blocks covered by said agreement, including the property next door to that owned and occupied by the defendants J. D. and Ethel Lee Shelley, for a period of more than 15 years; that some of said homes so owned and occupied by members of the Negro race were [fol. 16] built by them for that purpose; that all of said occupancy by said members of the Negro race began long after said restrictions were placed on file, and that said ownership and occupancy by said Negroes have been open, notorious and known to the plaintiffs herein and to the other signers, their assigns and successors in ownership of property covered by said restrictions; that neither these plaintiffs, nor any of the other signers of said restrictive agreement, nor their assigns, personal representatives, or successors, have ever taken any steps to prevent said occupancy and ownership of property covered by said agreement and located in said city blocks, particularly in the city block where the property transferred by and to these defendants is located, although well knowing that said agreement was being violated by signers thereof, or their assigns and successors; that said conduct, and lack of action to prevent said occupancy by Negroes on the part of these plaintiffs and others privy to said restrictive agreement, constitutes a waiver of the same by reason whereof said agreement has now become without force and effect and

a court of equity is without authority to enforce the same on account of said waiver by these plaintiffs and others.

10. Defendants further state that these plaintiffs have been guilty of laches, in that they have stood by for a long period of time, either themselves or their predecessors in ownership of parcels of property which they now claim to own, and kept silent and refrained from asserting whatever rights, if any, they may have had under the terms of said restrictive agreement to prevent Negroes from owning and occupying property covered by said restrictive agreement, although knowing that said agreement was being violated continuously for many years, to-wit; fifteen years.

11. Defendants further state that said restrictive agreement pleaded in plaintiffs' petition is also void, because it violates the rule against perpetuities, in that it prohibits the unrestricted sale of property to a class of citizens of the [fol. 17] United States for a period of fifty years, and prohibits the transfer of the same to any member of the Negro or Mongolian race for said period of time, or occupancy by any member of said races during said period, all without providing any means of or for the unrestricted sale to or occupancy by any member of said races, save by the unanimous written and acknowledged consent of the signers or their assigns or successors. That said agreement is an unreasonable restriction against the right to alien real property, and works a hardship on the owners thereof and tends to keep the same out of commercial channels for a longer period of time than the law allows.

12. Defendants further state that by its decision in the case of *Gandolfo v. Hartman*, 49 Fed. 181, decided in 1892, the federal court declared that a provision in a deed which provided that the land conveyed therein should never be rented to a Chinaman, was void because it was contrary to the 14th amendment to the constitution of the United States, and further ruled:

"Any result inhibited by the constitution can no more be accomplished by contract of individual citizens than by legislation, and the courts should no more enforce the one than the other."

Defendants further state that said decision has never been specifically overruled; that said decision was rendered nearly a decade after the civil rights cases (100 U. S. 3), wherein it was established and held that the provisions of the 14th amendment to the constitution was protection against governmental action, and not against individuals in a private capacity; that the United States Supreme Court, in the case of *Buchanan v. Warley* (245 U. S. 60), decided in 1917, cited and applied sections 41 and 42 of title 8 of the United States code, hereinbefore set out, to state action by a legislative body thereof, to-wit, an ordinance passed by the council of the City of Louisville, Kentucky, and held said ordinance void because it prohibited Negroes [fol. 18] from living in property located in certain sections of said city; that since said decision the use of restrictive covenants in deeds and restrictive agreements, similar to the one pleaded by the plaintiffs herein, have been resorted to more frequently, and have now become the sole and oft-used method by which to accomplish that which the court said could not be done by legislation; that, by means of said method of restrictive covenants and agreements, ghettos have been created in nearly all of the cities in certain states of the union, particularly in the state of Missouri and the City of St. Louis, thereby restricting Negro citizens to a limited area for homes and housing purposes, with the results hereinafter set forth.

13. That the Negro population in St. Louis has grown from 40,000 in 1910 to more than 117,000 at the present time, and that of this increase more than 15,000 took place between the taking of the United States census in 1930 and 1940, and that this rate has been equalled or exceeded in the years since the 1940 census. That despite this large increase in the Negro population of the City of St. Louis, the area which Negroes may live in without occupying property which has been restricted against them by deed or by agreements similar to the one pleaded by the plaintiffs herein has been enlarged very little; that, by means of said restrictions, the portions of this City of St. Louis occupied by Negroes have been narrowed, surrounded and circumscribed almost completely, and that by increasing business areas and the condemnation of lands by the City of St. Louis for purposes of widening streets and beautifying the city and building public institutions, this restricted area or ghetto

has become much smaller, and Negro families are compelled to move in together, three or more of them in quarters ordinarily housing one family; that this congested condition has been aggravated by reason of the influx of war workers during the last 3 years; that, due to this overcrowding, disease, crime and juvenile delinquency, the death rate among Negroes, and fire hazards, have all greatly increased, [fol. 19] and the health and safety of other portions of said city have been endangered; that another result of the creation and limiting of Negroes to homes in said ghettos is to increase the rental which they pay far beyond that paid by the average city dweller for even better housing accommodations, and Negroes are compelled to pay much higher prices for the property they buy to live in than white citizens pay for the same or better housing property. That the aforesaid conditions in St. Louis are an integral part of the living conditions and hardships imposed on Negroes in many parts of the United States, particularly in the City of St. Louis and in the State of Missouri, and that said restrictive covenants and agreements are the means by which said conditions have been brought about and are being aggravated, contrary to the provisions of the statutes and constitution set out herein and pleaded, and that the courts should afford relief from said conditions under their powers in equity.

14. Defendants further state that no court of appellate jurisdiction in Missouri has ever passed upon, or had before it for consideration, sections 41 and 42 of title 8 of the United States code above set forth.

15. Defendants further state that, by reason of the occupancy of property as homes by Negroes in the said city blocks covered by said restrictions for a period of at least 15 years prior to the purchase of said property by the defendants, Shelley, it has now become impossible to enforce said restrictive agreement so as to effectuate its purpose, to-wit, to keep said blocks free from occupancy by Negroes, or their ownership, and to preserve them for dwelling places for white people or people of Caucasian blood; that, in addition to the foregoing occupancy, said blocks have now been surrounded almost completely by Negro home owners and tenants, so that the neighborhood has completely changed in the last few years; that to enforce said restrictive agreement would not in any way accomplish the purpose

of the plaintiffs herein, but would work a hardship on these [fol. 20] defendants and other Negroes seeking places in which to live, and would prohibit present owners who can find no other buyers for their said property than members of the Negro race from disposing of the same while they may take a profit, or receive a fair value for the same.

15. Defendants further state that it is the settled law of Missouri that contracts made in violation of a valid statute or law, or which required the violation of such laws in their fulfillment, are void, and will not be enforced by the courts of this state; and defendants hereby invoke the application of said doctrine and settled rule of law to the facts of this case. That it is also the well-settled rule of decision in this state that cases decided by the courts of Missouri, or by other tribunals, which did not have before them for consideration a statute or other law at the time of making a ruling or deciding a cause, are not precedents to be followed by the courts when passing upon said statutes in a case where they are properly pleaded and are at issue therein; and the defendants hereby invoke that rule of decision in this case.

16. Defendants further state that the plaintiffs do not come into court with clean hands.

17. Defendants deny each and every allegation in plaintiffs' petition not hereinbefore specifically admitted.

Wherefore, having made a complete and full return to the order to show cause issued herein, and having made answer to the plaintiffs, defendants pray that the court will declare said restrictive agreement to be null and void and contrary to law; that the court will declare the same to have been waived by the plaintiffs by reason of their said failure to act, and their said laches, over a period of many years; that plaintiffs be estopped to assert the existence and effect of said agreement by reason of their said failure to act; and that the petition of the plaintiffs may be dismissed and for naught held, and that defendants may go hence without day, and recover their costs.

[fol. 21] IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

MINUTE ENTRIES OF ARGUMENT

On October 18, 1945, this cause coming on for *hearing* on the *order to show cause* why a temporary injunction should not be granted, come the parties hereto by their respective attorneys; thereupon the hearing on the order to show cause progressed before the Court upon the order to show cause, upon the defendants' return to the order to show cause and upon the evidence and proof adduced, and said hearing not being terminated, it is ordered by the Court that the further hearing of the order to show cause be laid over until tomorrow, Friday, October 19th, 1945, at 10 o'clock a.m.

It is further ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

On October 19th, 1945, the order to show cause herein coming on for *further hearing*, come again the parties hereto, by their respective attorneys; thereupon the further hearing on the order to show cause resumed and progressed before the Court and not being terminated, it is ordered by the Court that the further hearing be laid over until Monday, October 22nd, 1945, at 10 o'clock a.m.

It is further ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

On Friday, October 19, 1945, it is ordered by the Court that the hearing on this cause on its merits be set for Thursday, November 1st, 1945, at 10 o'clock a.m.

On Monday, October 22, 1945, the order to show cause coming on for further hearing, come again the parties hereto, by their respective attorneys, thereupon the further *hearing* on the order to show cause resumed and progressed before the Court and being *terminated*, the same is submitted to the Court and the Court having heard and duly considered the same, but not now being sufficiently advised of and concerning the premises, takes time to consider thereof.

[fol. 22] It is ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STIPULATION AS TO EXHIBITS ACCOMPANYING, AND TESTIMONY
IN, THE TRANSCRIPT OF RECORD

Counsel for the parties plaintiffs and defendants agree that

(1) Plaintiffs' exhibit A, the covenant at issue which was admitted in evidence over defendants' objection that it contravened section 41, title 8, United States code, is the only exhibit necessary to accompany this record, all other exhibits being sufficiently covered by stipulation of facts at pp. 1-4 hereof; therefore they stipulate it shall be the only exhibit set forth herein.

(2) The testimony of the following 10 witnesses is not essential to a determination of the issues on appeal; therefore they stipulate such testimony shall not be transcribed:

Bowers, Eli	(show cause)
Burdzy, M. A.	(show cause)
Bush, James T.	(show cause; Merits)
Fitzgerald, Josephine	(show cause)
Hackmann, Lucille	(show cause)
McCullough, Charles P.	(show cause)
Neumann, Charles P.	(show cause)
Paulos, Oscar	(show cause)
Seegers, G. L.	(show cause; merits)
Weathers, Frank A.	(merits)

3. The Court nisi prius having considered the evidence offered at the hearing on the order to show cause together with the evidence at the hearing on the merits, they stipulate that the evidence at both hearings, subject to paragraph (2) [fol. 23] next preceding, is before the appellate court.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

Statement of Evidence

On October 18, 1945, before the Honorable Wm. K. Koerner presiding as judge in division 3 of the aforesaid Circuit Court, in equity sitting, the following proceedings were had

on the order to show cause why temporary injunction should not issue.

APPEARANCES

For Plaintiffs	Gerald L. Seegers, Esq.
For Defendants	George L. Vaughn, Esq.

PLAINTIFFS' EVIDENCE

OFFER IN EVIDENCE

Mr. Seegers: I would like to offer in evidence recorder of deeds' book number 2400, and more particularly page 488, on which appears the recorded covenant or restriction agreement referred to in this case; and because there is no original of this in existence that we know of, I would like to read this into the record so we can, for once and all—

The Court: Have you a copy of it?

Mr. Seegers: Yes, your Honor.

The Court: All right. Read it into the record, and let me have the copy.

(Counsel agree that the wording only of the restriction agreement, omitting signatures, notary's acknowledgment and recorder of deeds' entry, shall be set forth in this transcript of the record. It follows.)

"This contract of restrictions made and entered into by the undersigned, the owners of the property fronting on Labadie Avenue in Blocks 3710-B and 3711-B between Cora Avenue on the West and Taylor Avenue on the East, Witnesseth: That for and in consideration of one dollar and [fol. 24] other valuable considerations paid by the undersigned, one to the other, the receipt of which is hereby acknowledged, each and every one of the undersigned persons hereby contract and agree with the other and for the benefit of all to place, and do place and make upon the Real Estate fronting on Labadie Avenue and running back to the alley on the North and South sides of Labadie Avenue, between Taylor Avenue and Cora Avenue, a restriction, which is to run with the title of said property in favor of each and every one of the undersigned parties, and their assigns and legal representatives and successors as the owners of this property, which shall not be removed except by the consent of all of the property owners by some instrument or Deed, made and Executed and put of record,

the said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that it shall be a condition all the time and whether recited and referred to as not in subsequent conveyances and shall attach to the land as a condition precedent to the sale of the same, that hereafter no part of said property or any portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race. It is further contracted and agreed that upon a violation of this restriction either one or all of the parties to this agreement shall be permitted and authorized to bring suit or suits at law or in equity to enforce this restriction as to the use and occupancy of said property in any Court or Courts and to forfeit the title to any lot or portion of lot that may be used in violation of this Restriction for the benefit of each and every person that may now or hereafter, after the recording of this restriction, become the owner of any property on said street. To have and to hold each to the [fol. 25] other their said property, subject, however, always and under all conditions to the terms of this restriction, each warranting to the other the compliance in every respect of the above restrictions. In Testimony whereof, the parties hereto have signed their name and seal this the 16th day of February, 1911."

[fol. 26] MATILDA SOHLMANN, sworn, on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. Mathilda Sohlmann.

Q. Mrs. Sohlmann, did you, prior to May, 1945, own the property located at 4600 Labadie?

A. Yes.

Q. Did you sell the property at that time?

A. I sold that the 30th of May.

Q. This year?

A. Yes.

Q. To whom did you sell it?

A. To Burns; Mr. Sleeter sold it for me. Mr. Sleeter was my agent; he sold it.

(Objection; the record is the best evidence.)

The Court: She can testify as to her own property, whether she owned a piece of property or not. When she says she sold, it doesn't mean she conveyed it. Passing of title must be proved by the record.

Mr. Vaughn: Does your Honor rule her testimony that she sold it is the best evidence?

The Court: I rule it is competent evidence as to her own ownership of her own property.

Mr. Vaughn: That is our objection.

The Court: Very well; overruled. This is the property at 4600 Labadie?

Mr. Seegers: That is the defendants' property; the now defendants' now property, the subject of plaintiffs' equitable action.

The Court: All right. This lady owned it prior to what date?

Mr. Seegers: Prior to May 18, 1945.

The Court: Very well.

Q. And you say you sold it through the Slattery Real Estate Company?

A. Yes, sir.

Mr. Vaughn: Move to strike that, your Honor, as not being the best evidence.

[fol. 27] The Court: Well, sold it; she don't say who she sold it to. You will have to show the transfer, if there is one.

Mr. Seegers: Well, it has no purpose to show the transfer, to whom; I am not interested in that.

The Court: Very well; proceed, if it is preliminary to something else. Overruled.

Mr. Vaughn: I didn't understand your Honor's ruling.

The Court: I say the objection will be overruled since, as I understand it, this is not an attempt to show a transfer of title; merely to show this lady moved out of the premises at that time.

Mr. Seegers: And divested herself of her interest.

The Court: Oh no, no.

Mr. Seegers: Well, she doesn't own it any more.

The Court: Objection will be sustained if that is your purpose.

Mr. Seegers: All right.

Mr. Vaughn: Move to strike it from the record.

The Court: Sustained.

Q. At the time you owned the property, Mrs. Sohlmann, did you know there was a restriction agreement?

A. Oh yes; I knew.

Mr. Vaughn: Just a moment.

A. I was—

Mr. Vaughn: Just a moment, please. Same objection, whether she knew or not.

The Court: Overruled.

Q. You knew there was a restriction agreement covering your property?

A. Yes, sir; I know, at the time I attended meetings, and I had chances to sell it to colored people but I refused.

Mr. Vaughn: Move to strike it out as not responsive.

The Court: Very well; sustained. The only point that is material is, did she know of the restrictions.

Mr. Seegers: That's all.

[fol. 28] Cross-examination.

By Mr. Vaughn:

Q. When did you cease to live at 4600 Labadie?

A. I never lived in; that was always I had tenants, my own tenants, Mrs. Edring; they lived upstairs, her husband and she.

Q. You never lived out there?

A. No; I never lived in it, No.

Q. Did you ever have any property in that block?

A. No, I never had no troubles.

Q. I say, property: did you have any property in that block?

A. No, not in that block; that was 4600 even, the only.

Q. Were you acquainted with any of the tenants who owned the, occupied the property on either side of this 4600?

A. No; they come on my—

Mr. Seegers: I object to that as immaterial.

A. —door, but I refused to do it all the time.

The Court: The objection will be overruled.

Q. Yes; the question I asked you, madam, was if you knew any of the other tenants who lived in property adjoining you, or close to yours, or either side of you.

The Court: Did you know any people lived along the street there?

A. I just know my tenants and what's to us, the second neighbor.

The Court: Just your tenants and the next neighbor to them?

A. They are all colored people, but I never know the name of them, I think Yeager is the name.

Questions by the Court:

Q. Where did they live?

A. Next to mine.

Q. On Labadie avenue?

A. Yes, sir.

Q. Next to your property?

A. Yes, sir.

Q. Your property was 4600 Labadie?

A. Yes, sir.

Q. How long did the Yaegers live there?

A. All the time since I bought it, and I am 1927.

Q. The Yaegers were colored people?

A. Colored people.

[fol. 29] Q. And they lived there since 1927?

A. Yes, sir.

Q. Any other colored people live along that block, do you know?

A. There was living one house in between, but I never knowed them because I ain't lived there. I just had tenants, and one of the tenants, is her husband, too.

Q. You mean the Yaegers, and there was another colored family lived in the same block?

A. Oh yes; but they moved out lately now.

Q. How long were they there?

A. That's quite a while; Mrs. Edering, maybe she knows them better because 7 years she is my tenants, and she is present here.

The Court: That's all I care to ask.

Mr. Vaughn resumes.

Q. Madam, did you know a colored woman living in the block named Sarah Young, who worked for the juvenile Court?

A. Why, that's my neighbor, I guess, see, I mentioned the next door neighbor.

The Court: I thought she said Yeager; or did I misunderstand her?

A. Yaeger.

Q. I am asking you now about Mrs. Sarah Young, and colored people.

A. Young; oh, I guess Young, not Yaeger; Young.

Q. She lived there; and you knew she lived there?

A. Yes, I know she lived there.

Q. And about how long did you know she lived there near your property?

A. Well, I guess she moved in next year when I bought, I guess.

Q. I will ask you, madam, if you ever brought any suit to oust her or any other colored people who lived in that block.

A. No, what I never done; I always had trouble not to rent.

The Court: Are the Yeagers still living there?

A. Not Yaeger; I think Youngs.

The Court: Young; are they still living there?

A. Yes.

[fol. 30] Mr. Vaughn: That's all.

WILLIAM WNUKOWSKI sworn on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. William Wnukowski.

Q. And where do you live, sir?

A. 4603 Labadie avenue.

Q. With respect to 4600 Labadie avenue, sir, where is your home located?

A. Direct across the street.

Q. Do you own the property in which you live?

A. Yes, sir.

Q. How long have you owned it?

A. 21 years the past August.

Q. Have you lived there in that house all of that time?

A. Yes, sir.

Q. Are you familiar with the other residences in that block?

A. Yes, sir.

Q. And the happenings that have taken place in that block during the period you have lived there?

A. Yes, sir.

Q. To your knowledge, how many negro families now reside in that block?

A. Right now there's three that I know of.

Q. Does that include or exclude the Shelleys, the defendants in this case who moved into 4600 Labadie?

A. Well, no; that doesn't include them.

Q. There are 3 other Negro families in addition to the Shelleys?

A. Yes, sir.

Q. Have any of those families to whom you have referred moved in there within the last 21 years?

A. No, sir.

Q. There have been no Negro families moved into that block within 21 years?

A. No, sir.

Mr. Seeger's: That's all.

[fol. 31] Cross-examination.

By Mr. Vaughn.

Q. Just a moment. Are you acquainted with the property at 4608 Labadie?

A. 4608.

Q. Yes, sir?

A. No, I am not acquainted with that. That's across the street, on the even side.

Q. Across the street from you; that's across the street from you, isn't it?

A. Yes, sir.

Q. And on the even side?

A. What's that?

Q. On the even numbered side; the houses on that side are even numbered?

A. Yes, sir.

Q. Now, if you were to draw a line directly from your door on the north side of this street,—that's where you live, isn't it?

A. Yes, sir.

Q. If you were to draw a line from your door straight across to the south side of the street, what property number would you strike on the south side?

A. Right from the numbers, they divide right there, from 4500 to 4600, and they jump.

Q. Well, can you tell me what 'phone (house) number you would strike on the south side?

A. I couldn't even tell you that.

Q. Well, who lives directly in front of you?

A. Direct in front, in me?

Q. Yes, sir.

A. I don't know the people.

Q. Are they colored or white?

A. They are colored live at 4600.

Q. That's what I say; right across the street.

A. They weren't in there before, but they just moved in there recently.

The Court: You are talking about 4600 now. He is talking about your client's number now.

Q. Well, do you know where 4608 is?

A. That's across the street, too.

Q. That's across the street, and it's kind of diagonally across the street from you, isn't it?

A. Yes.

Q. Do you know the people who live there?

[fol. 32] A. No, I don't know the people around the neighborhood at all. Very few people I know.

Q. You know those are colored people, don't you?

A. There are 3 families colored people live there.

Q. And these people moved there a few years ago?

A. I been going out and coming back from town, but I never did see them in there.

Q. The people who live at 4610, that's also diagonally across the street from you, isn't it?

A. Tell the truth, I don't know the neighbors there either. I know the colored people through the neighborhood there; when it comes to numbers I don't pay attention, but I know the three colored families across the street.

Q. For how many years have you been seeing colored people live in the block across from there?

A. When we bought that property there it was supposed to be restricted; we never knew there was colored people living in that block.

Mr. Vaughn: Move to strike, your Honor.

The Court: Sustained.

Q. For how many years have you seen colored people across the street from there?

A. As long as we lived there.

Q. How many families?

A. 3.

Q. How many moved out?

A. I seen one.

Q. Seen 3 colored people move in that place?

A. No; white people moved in there.

Q. I will ask you if it isn't a fact that colored people built a house in that block.

A. No; I don't know, that must have been before my time.

Q. Now, within the last 10 years don't you know, Mr. Witness, about 10 years ago a colored woman built a house there and that has been occupied by two or three people, and a man named Amos Higgins now lived there?

A. I don't know that.

Q. You wouldn't say it wasn't true, would you?

A. I can't say it was true; I don't know who built it.

[fol. 33] Q. And colored people live there?

A. Colored people lives there; I don't now who built it.

Q. Let me ask you if you ever brought a suit to restrain colored people that used them, to prevent them from living in your block.

Mr. Seegers: I object to that; there is no showing any of the houses to which counsel generally refers are numbers or properties signed up in this restrictive covenant. Until there is such a showing, evidence whether anybody, or not, brought a suit to remove colored people from houses on that block is not material.

The Court: Objection will be overruled.

Questions by the Court.

Q. How about this 4600; how long have colored people lived at 4600?

A. Well, I really don't know because, the way I understand, they moved in from the rear.

Q. Well, have any white people lived at 4600 within your recollection?

A. Yes, sir.

Q. How long ago, to the best of your recollection?

A. About 2 weeks ago.

Q. White people lived there until 2 weeks ago?

A. Yes, sir.

Q. At 4600?

A. Yes, sir.

The Court: All right; you proceed, now.

Mr. Vaughn Resumes Cross-examination.

Q. The block you live in you say is restricted?

A. Yes, sir.

Q. That is on the north side of the street?

A. Yes, sir.

Q. And you live between Taylor avenue on the east and Cora avenue on the west?

A. Yes, sir.

Q. And this block where these houses are, 4600 Labadie and 4608 and 4610, those houses are on the south side of the south side of the street, aren't they?

A. I don't hear you; I am hard of hearing.

[fol. 34] Q. Well, I say 4600, 4608, 4610 and these other houses where colored people live that you have seen living there ever since you have been there, or for some time, are on the south side of the street, aren't they?

A. Yes, sir.

Q. And they live between Taylor avenue on the east and Cora avenue on the west?

A. Yes, sir.

Q. I ask you again as I don't recall that you answered, if you yourself, by yourself or in company with anyone else, have ever brought a suit or action of any kind to prevent colored people from moving into or living in the property there on your side of the street, or on the south side of the street between Taylor avenue and Evans avenue.

Mr. Seegers: I object to that for the reason previously stated: that unless there is showing in evidence that property not specifically mentioned or described by counsel in his question is shown to be included in the covenant, it is inadmissible; secondly, that the witness has already testified to his knowledge there have been no colored families moved into the block, and that during his entire period of ownership of property in that block no colored families have moved in with the exception of 2 weeks ago.

The Court: The objection will be overruled. There's very little evidence that's incompetent in cases of this kind, because the matter is in the discretion of the Court. Overruled.

Mr. Vaughn: Your Honor, it is competent for this purpose; it is competent hereto show, if we may show by this witness, that there are lots in those blocks on either side of the street that are not restricted, where they may be sold to and occupied by colored people; then that goes to render—

The Court: His testimony, of course, doesn't show that. It merely shows they didn't file suit.

Mr. Vaughn: That's what I asked him.

The Court: That doesn't tend to prove the lots were restricted or were not restricted. The objection will be overruled.

Q. Will you please answer that question?

[fol. 35] The Court: He asked whether you ever filed a suit, you yourself or in connection with anybody else ever filed a suit to put any colored people out.

A. No, sir.

The Court: Or prevent any colored people from coming in.

A. No, sir.

Q. What time in the morning do you go to work?

A. I go to work at about 10 minutes after 6, or a quarter after 6.

Q. And what time do you get home?

A. I get home some time after 6:30 or so, a quarter to 7.

Q. Now, summer time when you came home, during this last summer and summer before last it was still light a good, long time, wasn't it?

A. Yes, sir.

Q. Didn't you ever see, during last summer and summer before last, colored people living at 4608 Labadie avenue, across the street from you?

A. Well, the people there and children running up and down the sidewalk, I didn't know exactly where they lived.

Q. There were colored children—

A. Yes.

Q. —running up and down the sidewalk?

A. Yes. I didn't know exactly what family they were.

Mr. Vaughn: That's all.

Redirect examination.

By Mr. Seegers:

Q. Mr. Witness, this Labadie avenue between Taylor and Cora, is that a continuous block or is there a corner between in there?

A. No; it's a continuous block.

Q. It's a continuous block; there's no corner between Cora and Taylor—

A. No, sir.

Q. —on either side of Labadie?

A. No, sir.

Q. This 4600 Labadie isn't a corner lot?

A. No, sir.

Mr. Seegers: That's all.

[fol. 36] **EMIL KOOB**, on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. Emil Koob.

Q. And where do you live?

A. 4935 Cote Brillante.

Q. In what business or profession are you engaged?

A. Retail baking.

Q. And where is that located?

A. North St. Louis; 2823 Marcus.

Q. How long has your bakery been located at that address?

A. The building has been located there since 1902.

Q. And how long has the bakery business been conducted there under the name Koob Bakery?

A. Since the turn of the century.

Q. Will you give the date, please?

A. 1900.

Q. And how long have you lived at your present address?

A. My present address, I have lived there for 8 years.

Q. With respect to the location of your bakery, what distance are you from 4600 Labadie?

A. 4600 Labadie; Marcus avenue is the 4700 intersection, and the bakery is a lot removed from St. Louis avenue, which is a block from Labadie; would make it approximately a block and a half.

Q. The bakery is in the middle of the block?

A. The bakery is just one lot removed from the corner of St. Louis avenue.

Q. So you are one block and one lot removed from Labadie avenue, and one block west of 4600?

A. That's right.

Q. Are you connected with any improvement association in that neighborhood, Mr. Koob?

A. Yes, I am.

Q. What's the name of it?

A. The Marcus Improvement Association.

Q. The Marcus Avenue Improvement Association?

A. The Marcus Avenue Improvement Association.

A. What position, if any, do you hold in that organization?

A. At the moment I happen to be the chairman; president of the board.

Q. How long have you been president?

A. 2 years; 2 years and a half.

Q. How long have you been connected with the organization [fol. 37] as a member?

A. I have been connected with the organization for some 20 odd years.

Q. During the periods during which you have been a member of that organization have you interested yourself in the immediate neighborhood?

A. Yes; very much so.

Mr. Vaughn: What immediate neighborhood?

The Court: Be more definite about it.

Q. What are the bounds of the district covered by this Marcus Avenue Improvement Association; can you recite them?

A. Yes. The northern boundary is Natural Bridge, and has an expanse—

Q. What hundred north is that, do you know?

A. Natural Bridge, I think it's 3400; I am not—

Q. What are the other boundaries?

A. It may be 35. And the other boundaries, the northern boundary is Natural Bridge road, and the expanse on that particular street is Newstead to Kingshighway; that's the picture, probably better portray that by giving the picture that way. And then we go south on Kingshighway to Maffitt place.

Q. How far south is that in numbers, do you know?

A. Maffitt avenue is 2800 north; and then we go east on Maffitt avenue to Taylor avenue.

Q. What hundred east is that?

A. That's 2500 east.

Q. That's 4500 west; and—

A. And then we turn to the north on Newstead, and direct our course on Newstead and take Newstead on over to Natural Bridge on the west side, and take in that entire territory.

Q. Now, during the 25 years you have been a member of the Marcus Avenue Association have you been interested in that territory?

A. Oh, yes.

Mr. Vaughn: If the Court please, I don't see the purpose or the relevancy of this testimony. This is far removed from the property in question.

The Court: We will have to see what the relevancy is.

Mr. Seegers: This is preliminary.

The Court: Merely preliminary.

[fol. 38] What was your answer to that question, Mr. Koob?

The Court: He said yes.

A. Yes.

Q. Have you made it your point, or your avocation to watch the development of property within that district?

Mr. Vaughn: Just a minute.

A. Yes.

Mr. Vaughn: Object to that as leading, your Honor.

The Court: Overruled.

Q. Your answer is what?

A. I have made an intense study over a period of years.

Q. Has that study included the immediate neighborhood in which Labadie avenue is located?

A. Yes; very definitely.

The Court: Is this in the district here?

A. Yes, your Honor.

Q. Have you familiarized yourself in that 25 years with the property in the 4500 and 4600 block of Labadie avenue?

A. Yes.

Q. Have you paid any attention to the state of the property in this territory, and particularly the 46- and 4500 blocks of Labadie, as to whether or not the property there is occupied by negroes or white people?

A. Yes; I have been.

Q. Mr. Koob, are there any negroes living in the 4500 block of Labadie avenue, in the block numbered 4500?

A. I believe there's one.

Q. There's one?

A. I believe so.

Q. How long has that person, that negro person or family lived in that block?

A. To the best of my knowledge, some 23 years.

Q. Are there any negro families residing at the present time in the 4600 numbered portion of Labadie avenue?

A. Yes.

Q. How many?

A. In the 4600, including the new occupants?

Q. The defendants Shelley?

A. Yes.

[fol. 39] Q. Yes; include them.

Mr. Vaughn: Let's exclude them.

A. There are 2 or 3 families; besides Shelleys, I think there are two.

Q. Do you know the numbers of the houses in which those 2 colored families reside?

A. Yes; well, 4608, and I think it's 4610.

Q. How long—

Mr. Vaughn: Just a minute.

The Court: Have you completed your answer, sir?

A. I can't give you the accurate house numbers here; I know that the 4608 property—if the Court please, can I elaborate on that?

The Court: Certainly.

Q. I am familiar with the 4608 property, together with the 4610, and likewise 4606 which has been occupied by negroes over a great over a period of years as long as I can remember.

Q. These 3 houses?

A. That's right.

The Court: 3 families besides the defendants?

A. Well, recently there was a foreclosure in the 4606 piece.

The Court: Never mind that.

A. That is occupied by whites; it is not occupied by negroes.

The Court: Which one?

A. 4608.

Q. By whom is it occupied now?

A. It is occupied by whites.

Q. Now?

A. Yes.

Q. So, excluding the Shelleys, there are 2 negro families living—

A. 3. I am not sure about that, see?

Q. Wait 'til I finish. How many negro families are now residing, excluding the Shelleys, in the 4600 numbers of Labadie avenue?

A. Excluding them?

Q. Excluding the Shelleys.

A. 2.

Q. With the Shelleys, how many now reside in the 4600 properties of Labadie avenue?

A. 3 with the Shelleys.

Q. Can you tell the addresses of the other 2, excluding the [fol. 40] Shelleys, on Labadie avenue in which now negroes now reside?

A. For me to be specific, or rather accurate in saying 4608 or -10, I could stand to be corrected on those addresses. In 4608, the property there was originally in the hands of people by the name of Boxley; I knew the children—

The Court: Just answer the question, if you are certain about the addresses, just say so; if not, say that.

Q. Yes; with respect to people, now, and starting from the house number 4600 Labadie, how many houses intervene, if any, between 4600 Labadie and the first house there occupied by Negroes?

A. 2 or 3.

Q. Now, let's get this straight. 4600 Labadie is the house in which the Shelleys reside?

A. That's right.

Q. You say that, you previously testified that 4604 was formerly occupied by Negroes, but is now occupied by whites?

A. 4606.

Q. 4606. How many houses interpose, if you know, between 4600 and 4606?

A. Well, taking them from the amount, property addresses, 4600, 4602, 4604; I am assuming——

Q. You don't know?

A. That's right.

Q. Do you know how many houses removed from 4600 is the first house occupied by a Negro family?

The Court: He just said he didn't know.

A. Three houses.

Q. Three houses; you know that for a fact, Mr. Koob.

The Court: Do you assume that or do you know it, sir?

A. I know it.

Q. Do you know when, Mr. Koob, the two properties which you have referred to as 4608 and 4610 Labadie, when they first became occupied by Negroes?

A. 4608?

Q. And -10.

A. Well, I got this by the——

The Court: Just answer, won't you, please sir; the best you can.

A. The 4608 property was occupied by Negroes——

Mr. Vaughn: Just a minute.

[fol. 41] A. —since 18——

Mr. Vaughn: Just a minute. I want to make an objection. I object as not responsive.

Q. I asked you, Mr. Koob, if you knew at what time Negro families first occupied the properties now known as 4608 and 4610.

The Court: Do you know that's the question?

A. Yes.

Q. With respect to 4608, when was it first occupied by Negroes?

A. 4608 was first occupied by Negroes in 1882.

Q. Now, with respect to 4610, do you know?

A. I do not.

Q. How long can you remember back with respect to Negro occupancy of 4610?

A. As long as I can remember.

Q. How long in years?

A. 30 years.

Q. 30 years. Were there Negroes living in that particular spot 30 years ago?

A. The best of my knowledge.

Q. Do you remember it that way?

A. Now—

The Court: Just answer: is that the best of your recollection?

A. That's right. I would like to enlarge upon this.

The Court: Well, we don't want to get too much talk in the answer. When he asks you certain questions try to answer them, if you can.

Q. With respect to 4608 Labadie, do you know from your research and study how that come into the hands of Negroes in 1882?

Mr. Vaughn: If the Court please, I don't think that's competent. It calls for a conclusion on his research and study.

The Court: Well, find out the basis for his answer after he gives it.

Mr. Seegers: I thought I showed he was an expert with respect to occupancy by white or coloreds in this district.

The Court: Overruled. You may state how, if you know of your own knowledge.

A. This particular piece of property was run down—
[fol. 42] Mr. Vaughn: If the Court please, may he answer
yes or no? He hasn't answered the question.

A. I say yes.

The Court: All right. Testify, now, only from your own
knowledge, now.

A. Not from hearsay. That's difficult; I have some re-
search back in—

Q. Never mind about that.

A. —1923; and by virtue of the records we establish the
fact that the Claggett—

Mr. Vaughn: I object to that; not competent, not respon-
sive.

The Court: Did you examine the records yourself?

A. Yes, sir; I myself examined the records.

Mr. Vaughn: Make the further objection the record is
the best evidence, your Honor.

The Court: Well, he just states how he arrived at his
conclusion.

Mr. Vaughn: And that it is a conclusion of the wit-
ness.

The Court: And that is the way he arrived at it, stating
the basis for it. Overruled.

A. On October 18, 1882,—

Mr. Vaughn: I object to the reference to a memorandum
unless we know how it was made.

The Court: Where did you make that?

A. Out of an office of the recorder of deeds.

The Court: You made it yourself?

A. Yes.

The Court: Overruled.

A. That Mrs. Grace Boxley, who was a negress, on Oc-
tober the 10th, 1882, became the recipient of a parcel of
property or a lot.

The Court: How did you know she was a colored per-
son?

A. Because I knew her descendants.

Mr. Vaughn: If the Court please, I submit that's not sufficient knowledge because, of the thirteen million negroes in America, twelve million of them have had one white parent.

[fol. 43] Mr. Seegers: Oh, now,—

Mr. Vaughn: That is a scientific fact; I can establish it among the authorities as stated in the Reader's Digest awhile ago.

The Court: I have no doubt that's approximately true.

Mr. Vaughn: So that the descendants of a person doesn't tell to what race he belongs. For that reason I say it is incompetent.

The Court: Objection overruled. It may not be conclusive.

A: I knew the Washington Boxley and also Alice Boxley, I knew them, I knew them from childhood. That's how I establish the fact Boxleys are Negroes.

The Court: You still haven't answered how they came into possession of this property.

A. They came into possession of this property by virtue of a grant.

The Court: A deed to them?

A. That's right; by William H. Claggett.

The Court: Is he the man that laid out this subdivision?

A. That's right.

The Court: All right.

Q. Now, Mr. Koob, do you know from your own knowledge and examination of records whether that grant you just referred to from Claggett to Boxleys covered one or more lots in this particular block?

The Court: Well of course the record would have to be the best evidence of that.

A. Well, I don't know; I don't know.

Q. Do you have any knowledge of your own with respect to 4610 Labadie avenue, as to how it became the property of Negroes?

A. That was a transfer of later date. That was a much later date than that.

Q. Approximately when?

A. Well, the next parcel of property was 1904. That was the 4606 piece. That was owned at the time (examining a paper) by Frank McElroy in 1904. Well, he was a colored person.

Q. And 4610?

A. That transfer I can't give you the specific date of.

Q. Well, now how long have you know Negroes to live at 4610 Labadie?

The Court: He stated that.

[fol. 44] A. I stated before, to the best of my recollection 30 years. That may vary.

Q. Now, Mr. Koob, from your own personal knowledge have any Negroes or Negro families moved into any other residences in the 4600 numbered block of Labadie within the period of your memory?

A. No.

Q. Within the last 30 years you know of none?

A. No.

Mr. Seegers: That's all.

A. That may vary in years; I don't want to be pinned down to any specific year.

Q. Within the period of your memory of 4500 and 4600 blocks of Labadie avenue, has that neighborhood changed with respect to occupancy by Negroes or whites, within the last 25 or 30 years?

A. No; the character of the neighborhood definitely—

Q. With respect to Negroes' occupancy, it increased or decreased, or what?

A. No decrease; I would say it increased.

Q. Are you familiar from own experience and knowledge, Mr. Koob, with what happens to property values in a neighborhood populated by whites, and Negroes move into it?

Mr. Vaughn: Just a minute. If the Court please, I don't think that's a proper question. This witness isn't qualified as an expert.

The Court: Sustained. The witness testifies as to values of real estate.

Q. Now, Mr. Koob, with respect to the nearest point to 4600 Labadie that is populated either predominantly or

exclusively by Negroes, what distance exists between such a point in any direction and 4600 Labadie.

A. 4600 Labadie; two blocks.

Q. Two blocks; and you would say—

A. At least two blocks.

Q. Two blocks from 4600 Labadie is a street predominantly or totally occupied by Negroes?

A. Yes, sir.

The Court: What direction?

A. East. From Newstead east.

[fol. 45] Q. Now, Mr. Koob, with respect to that condition two blocks east of 4600 Labadie, how long in point of time has that particular point been predominantly occupied by Negroes?

A. 10 years at least.

Q. 10 years at least?

A. At least.

Mr. Seegers: That's all.

Cross-examination.

By Mr. Vaughn:

Q. Mr. Koob, where were you born?

A. In St. Louis. You mean the specific address?

The Court: No; that's enough. St. Louis is sufficient.

Q. When were you born, to know your family history?

A. I was born in 1904.

Q. So that all of these questions, 25, 30 and 40 years, 1882 that you testified to, that's not of your own knowledge; that's all your research, is that right?

Mr. Seegers: Now, if the Court please; I object to that for the reason it is a triple question, refers to 3 or 4 distinct instances. Counsel should split them up.

The Court: Ask him about one locality at a time.

Q. Now, you say 4608 from 1882. That's, of course, way before you were born.

A. That's right.

Q. About 12 years before you were born. What you testified to—is 22 years before you were born. What you

testified to in reference to that is a result of your looking up records or things of that sort?

A. Yes.

Q. When did you first go to live in the neighborhood where you say where you now live?

A. 1904.

Q. And you have lived where since 1904?

A. In the general district that I outlined there.

Q. How far have you lived, do you now live from the 4600 block on Labadie avenue?

A. My home is a possible half mile, three quarters of a mile.

[fol. 46] Q. And has always been?

A. No, of recent date; and specifically I am living in this residence since 1937.

Q. Which is where?

A. 4935 Cote Brillante; east of Kingshighway on Cote Brillante.

Q. 4935 Cote Brillante. Now, where did you live prior to that time?

A. 2823 Marcus avenue.

Q. And how long have you been connected with this organization, this improvement association?

A. Oh, I have been associated there for some 20 odd years.

Q. 20 odd years; and you have held an official position how long?

A. Oh, official positions all through those years, a matter of being a director. Of recent date I happen to be president of the organization.

Q. Now, as I understand your testimony, you say that the nearest Negroes who live, other than the few you talked about, to 4600 Labadie are 2 blocks away?

A. Yes.

Q. Is that east or west?

A. That's east of 4600.

Q. You know where Maffitt is, don't you?

A. Two blocks away from Labadie.

Q. Two blocks north of Labadie?

A. Two blocks south of Labadie.

Q. South of Labadie?

A. Yes.

Q. Isn't it a fact, Mr. Koob, that negroes live on Labadie avenue in the 45- and 4600 block,—Maffitt?

A. Maffitt; yes.

Q. Also live on St. Louis avenue in those blocks?

A. In the 45- and 46, they live there now?

Q. Do you know that to be a fact, I asked you.

A. No, it isn't.

Q. Did you ever know a man named Alexander in the 4600 block who worked for the government?

A. I knew a man named Douglas, two families on St. Louis avenue between Cora and Marcus, that lived there for many years. I knew the families, both of them.

[fol. 47] Q. Yes. A large number of Negroes live on Cora avenue, do they not?

A. South of Kennerly, yes.

Q. Well, they live north of Kennerly?

A. No. No.

Mr. Seegers: If the Court please, if he will tell us these distances; I am not that familiar.

The Court: Try to be more definite. Where is Kennerly with reference to Labadie?

A. 3 blocks removed.

The Court: South, or north?

A. South.

The Court: It runs parallel with Labadie?

A. It runs parallel to them: Labadie, St. Louis, Maffitt and Kennerly.

Q. And Cora?

A. Cora is the street that divides between Taylor and Marcus?

The Court: It runs north and south?

A. South.

The Court: His question is whether colored people live on Cora between Labadie and Kennerly.

A. There are none.

Q. They live on the block south, between Labadie and the street south of it?

A. They live between Labadie and St. Louis, no, they don't live between, there's no frontage on Cora property.

Q. Are you acquainted with the property at 4614 Labadie avenue?

A. 4614?

Q. Yes, sir.

A. I can't picture the property, no, unless that's the 4610 I have reference to.

Q. Don't you know about 9 years ago a colored woman named Ruth Ward Williams built a house at 4614 Labadie avenue? Dorothy Word built a house at 4614, now Dorothy Hicks, built a house at 4614 Labadie avenue?

A. Dorothy Ward. She built the house; can I give you the history of that.

Q. I asked you if you know that fact.

A. Yes; she built the house after two—

[fol. 48] The Court: Never mind about that; just answer the questions.

A. Two form questions.

The Court: Just a minute. Did you hear me? Answer the question.

A. Yes.

The Court: Don't volunteer anything.

Q. I will ask you if, since that house was built by Miss Ward, Negroes haven't occupied it.

A. Yes, sir.

Q. Do you know who now lives there?

A. As far as I know, Miss Ward, Dorothy Ward.

The Court: Is she a colored person?

A. Yes.

The Court: That's 4614?

A. That's 4608, to my knowledge.

The Court: The question was about 4614.

A. Well, there are no Negroes living at 4614.

Q. Don't you know that the Wards now live and have lived, ever since that house was built, at 4614 Labadie avenue? Did you learn that fact?

A. (Examining a paper) I am not familiar with the addresses; let's strike—I know Dorothy Ward lives there—

The Court: 4614 would be west of 4610?

A. Yes.

The Court: 4608 is east. Do you know of any colored families live west?

A. At—4614, that house may be—no, I don't.

Q. Did you ever know a colored schoolteacher at the time who lived in that block, named Robert Watts?

Mr. Seegers: I object; it's too indefinite. What block is it?

Q. 4610 Labadie avenue; that's the only one we are inquiring about, that block.

A. Yes.

Q. Did you know him?

A. Yes.

Q. Where did he live?

A. 4606. Or -4; one of those homes in there. I am not sure of the specific address; I knew the man.

Q. Isn't it a fact that he lived 4608?

[fol. 49] A. Well, that's the number, that's the Boxley estate I am talking about. If the Court please, just a minute.

The Court: You said 4608. He inquired about that.

A. There were 2 homes involved to begin with; now one home is there, that's the home—

Q. Didn't colored people during the time Robert Watts lived at 4608, live at 4606 and 4604 on Labadie?

A. I don't know about Robert Watts. I testified at the outset that 4606 was owned by Mr. Frank McElroy; I knew Mr. McElroy, he—

Q. But you did testify a minute ago Robert Watts, didn't you?

A. Yes; but he lived in the same house.

Q. Frank McElroy?

A. Yes.

Q. Well, who lived at 4604 and 4610?

A. Who lived in there? There were so many people lived in there through the years I couldn't give you those names; it would be difficult.

The Court: Well, if you don't know just tell him you don't know.

Q. Now, are you acquainted and have been during all these years with 4606 Labadie?

A. 4606; yes.

Q. Did you know a colored family named Penney who lived there from 1937 to 1944?

A. I don't know them.

Q. You didn't know them. Now, do you know a man living in the 4600 block on Labadie avenue named Elijah James?

A. No, I don't.

Q. Don't you know as a matter of fact, Mr. Koob, that he lives at 4608, in the same house Robert Watts used to live in?

A. I don't know that.

Q. And you don't know that he moved in the last year and a half, do you?

A. I don't know that. I only know that that's been occupied by colored people over a period, a span of 30 years they have been moving in and out; whether they are relatives or what they are, I don't know their names.

Q. How old do you say you are now?

A. How old I am?

[fol. 50] Q. Yes, sir.

A. I am exactly 41 years old.

Q. Now, then when you were 11 years old how close to the 4600 block of Labadie avenue did you live?

A. I lived 2 blocks away.

Q. What was your address at that time?

A. 2823 Marcus avenue.

Q. Now, haven't the population in the neighborhood of your bakery increased in the last 5 years?

Mr. Seegers: I object to it; it's too indefinite. If he wants to talk about the bakery let's specify the distance from the bakery, and the condition.

The Court: Objection overruled.

Mr. Vaughn: You went into it.

A. What distance?

The Court: Never mind, now. In the neighborhood of your bakery has the colored population increased in the last 5 years?

A. It has advanced.

Q. How far is your bakery from the Cote Brillante school?

A. It is approximately 3 blocks.

Q. Eh?

A. 3 blocks approximately.

Q. Isn't it true, Mr. Koob, the Cote Brilliante school is now and has been for the past 3 or 5 years almost entirely surrounded by colored families?

Mr. Seegers: I object to it; too indefinite to give us any picture.

A. It has been entirely surrounded by colored?

Q. I said almost entirely surrounded.

A. No.

Q. Well, haven't there been a larger number of colored people living near that school and attend it than whites?

A. No.

Q. It now has been turned over to colored children, hasn't it?

A. That's right.

Mr. Seegers: I object to it for the reason it is irrelevant and immaterial to any issues in this case.

The Court: Overruled.

[fol. 51] Q. Did you have any hand, or any part in the effort to keep colored children from having the Cote Brilliante school, Mr. Koob?

Mr. Seegers: I object to that for the reason it is certainly immaterial and irrelevant, and refers to issues in another case pending before this Court.

The Court: Overruled.

A. What is your question?

Mr. Vaughn: Read the question.

The Court: Did you have any part in bringing that suit?

A. Is that the case before the board of education? I did.

Q. And you have also a personal interest in this case, do you not, as an officer of the association?

A. I am discharging an obligation.

Q. And what obligation is that, Mr. Koob?

A. How's that?

Q. What obligation is that?

A. To the people who belong in the community there.

Q. You still haven't answered my question; I asked you what obligation is that.

A. The protection of their property.

A. And in that you are here testifying in this case in an effort to enable the plaintiffs here to prevail in this

injunction suit, in protecting, as you say, the property of the people in that community?

A. That's right.

Q. Do you know a colored woman named Sarah Young, who lives in that 4600 block on Labadie avenue?

A. I heard of her; I don't know her.

Q. Do you know what she does for a living?

A. I heard it mentioned here, that she does some work in the courts.

Q. Yes.

A. That's all I know.

Q. Did you never learn, before you heard it in this courtroom, that Sarah Young was a member, worked in the juvenile court and has for a long number of years?

A. I knew she worked with the court; but the specific court I learned while in this courtroom.

Q. Don't you know Sarah Young has lived in the 4600 [fol. 52] block on Labadie avenue, in property that she bought about 22 years ago, during all these years since that time, and now lives there?

A. Is what?

Q. That Sarah Young now lives on Labadie avenue, in the 4600 block of Labadie.

A. I said that before.

Q. That she bought about 22 years ago?

A. There have been no transfer; I testified about that before, answered that question on that before.

Q. Do you say yes or no?

The Court: He knows Sarah Young lives on the block and has lived there for some time.

A. That's what I answered before.

Q. Well, when did you first learn that she lived there?

A. When did I first learn that she lived there?

Q. Yes, sir.

A. I heard she lived there some 20 years ago, 22 years ago.

Q. 22 years ago?

A. Yes.

Q. Do you know when this restriction was placed on this property in the 4600 block on Labadie avenue?

A. 1911.

Q. 1911?

A. Yes.

Q. So at least Sarah Young moved into that block since the restriction; that's correct, isn't it?

A. Yes.

Q. Do you know that the Ward woman bought and moved into that block since the restriction, and built a house?

A. I told you what the Ward woman did; she built a house on the Boxley estate; the Ball Lumber Company built it.

Q. Do I understand you, the property on which the Ward woman's house now stands is on the Boxley estate that formerly belonged to a Negro; is that right?

A. That's right.

Q. Couldn't be mistaken about that?

A. Not if the records are right.

Q. Don't you know 4608 is the Boxley estate?

A. The records recite Dorothy Ward is the party in this particular house owned formerly by Alice Boxley King.

[fol. 53] Q. You say that's Alice Boxley King?

A. She was the former owner after it came down thro the—

Q. Were you in the courtroom this morning before the lawsuit, at least when Mrs. Sohlmann testified?

A. Yes.

Q. Do you know what number her property is in the 4600 block of Labadie avenue?

A. Yes; 4600 even. She said she was the owner of this piece.

Q. From your investigation of records do you know?

A. Do I know? Yes.

Q. What is that number?

A. 4600.

Q. And did you hear her, testified on both sides of her that colored people had lived for the past 20 years?

A. Did I hear her testify that on both sides; no, I didn't hear her testify.

Q. Didn't you hear her testify on either side next door to her colored people had lived for the last 20 years?

A. No.

Q. Or 2 doors from her?

A. I heard 2 doofs or 3 doors, but not next door.

Q. Didn't hear her testify about colored people, families, lived close to her?

A. 3 doors from her.

Q. That is a fact, isn't it?

A. Yes.

Q. Is that west of her, or east of her where these colored families live?

A. That's west of her.

Q. And that's in the 4600 block, isn't it?

A. That's right.

Q. West of her. Did you know a colored family, a colored man named Amos Hicks and his family that lived at 4614 Labadie avenue during the past 4 or 5 years?

A. (Laughing) No; didn't.

Q. Did you know a man named Shackelford who, during the last 9 years, has lived at 4610?

A. I don't know the man.

[fol. 54] Q. And did you find out by your investigation, records, these people lived there?

A. My investigation of the records ascertains the fact how long Negroes have been there.

Q. Did you see any colored children playing up and down the street in the 4600 block of Labadie avenue?

A. No; I don't see any.

Q. How often do you go over there?

A. Don't have any occasion to get over there too often. I probably pass the street there 2 or 3 times a week coming, driving through the street coming west.

Q. Do you have any Negro customers at your bakery?

Mr. Seegers: I object; it's immaterial to any issue.

The Court: Overruled.

Q. Answer that.

A. Do we have any?

Q. Yes, sir.

A. I am not in that close touch.

Q. What do you mean, you are not in that close touch?

A. I am not behind the counter. We have 22 girls representing us in sales; I wouldn't know, couldn't answer that question honestly.

Q. What position do you hold in that company?

A. I am a partner.

Q. Do you handle any part of the business?

A. Certainly I do.

Q. What particular item—what part of the time do you spend at your plant?

A. All my time there.

Q. Do you spend it in the sales room?

A. I spend it in the office, in the distribution, in production; we have 6 retail stores in north St. Louis, and I can't confine my activities to one shop.

Q. Did you, Mr. Koob, make an investigation and write those notes up for the purpose of making use of them in this trial?

A. How's that? (Question read.) I refreshed my memory with them, yes.

The Court: You made them for the purpose of this trial?

A. Purpose of this trial; yes.

The Court: All right.

[fol. 55] Q. And when did you make them?

A. These notes I have?

Q. Yes, sir.

A. I made them Monday of this week.

— Before that time, before you made those notes you had no independent recollection?

A. Oh yes. I had some references or data that was handed to me by virtue of dope that the association had.

1 p. m.-2:22 p. m., recess

Q. Mr. Koob, do any Negroes live in the 4500 block of Labadie avenue?

A. Yes; right at the very edge of it.

Q. Which edge?

A. 4562.

Q. That's where Mr. Taylor Young lives, isn't it?

A. Yes.

Q. 4562.

The Court: 4562; is that west of Taylor? Yes.

A. That's west of Taylor.

Q. That's west of Taylor.

A. I don't know how many live in it. It's a parcel of property that's occupied, that Sarah Young holds it. There may be others living in it.

Q. Now I ask you: this is 4600 even where Shelleys live?

A. That's the house in question, yes.

Q. Well, do you know whether they live there or not?

A. I am told they live there; I have—I don't know by coming in contact with them, no.

Q. Well, now you don't know who lives at 4608?

A. 4608, -10 and -14 I know are occupied by colored people, but I don't know who the, who lives in those homes.

Q. In the course of your knowledge you don't know when they moved there?

A. As I—there haven't been any people moved into those homes, any colored people moved into those homes, or rather, 'way back, occupied by colored people 20 years ago to my knowledge, in 4608 and -10.

Q. And when did 4614 become occupied by colored people?

A. 4614 I testified before, as I spoke about before, was [fol. 56] not the house that the Boxleys owned; I was mistaken there, and I verified the address myself. I didn't take the address from the city hall; it was given to me by one of the men in the record office, and I verified that only a half hour ago that it's 4614 where the Boxleys lived.

Q. Then they didn't live at 4608?

A. No.

Q. So that the property at 4608 has been occupied in the last 20 years?

A. In the last 20 years, past 20-years, at least 20 years ago; that's what I say.

Q. That's true of 4610 also?

A. 4610.

Q. And that's true of 4562?

A. They are all past 20 years, that's true, they have been occupied by colored people over 20 years.

The Court: How far east of 4600 is 4562?

A. It's immediately east of it.

The Court: Next house east?

A. That's right.

Mr. Vaughn: Next door east, your Honor.

Q. Now, these 2 blocks from Taylor avenue, what's the next block—

A. Cora.

Q. From Taylor to Cora, on both sides of Labadie avenue, those are the restricted blocks there?

A. Not entirely; those particular parcels we mention there are not restricted.

Q. Well, are there any others not restricted?

A. That I don't know, how many others; there are others, yes; how many I don't know offhand.

Q. They are probably, then, occupied and owned by white people in there who are not restricted; that's correct, isn't it?

A. I believe so.

Q. You don't know how many they are?

A. I don't know.

Q. Would you have an idea?

A. I wouldn't give an approximate idea, either; I would actually be guessing. I would rather establish something by comparing with the records, the plat-book.

Q. Well, now I understood you did arrange to show you made this investigation last week or month, or this week, [fol. 57] with the idea of testifying in this case: that's correct, isn't it?

A. Not with any idea of testifying; not with any idea of testifying. As a matter of fact, I had some misgivings about being here today.

Q. Well, you knew you were to be called as a witness yourself; do you know?

A. Through counsel this morning.

Q. Counsel asked you while you were here in the court to appear as a witness?

A. That's right; as a witness.

Q. Did you confer with anybody as to what testimony they wanted of you; with anybody?

A. I conferred with counsel this morning, yes.

Q. Anybody else?

A. No.

Q. Then you would say I am mistaken when I remember you to have testified before luncheon that you would make this survey for the purpose of testifying in this case?

Mr. Seegers: I object to the wording of the question.

The Court: Overruled.

A. That you were mistaken?

The Court: He wants to know, was he mistaken in assuming in his recollection that you testified you made these cop-

ies over at the recorder's office and refreshed your recollection for the purpose of testifying in this case.

A. Not testifying in the case, but to hand them over to counsel if he didn't have them.

Q. Well, did you say this morning that you made them for the purpose of giving testimony?

A. I beg your pardon. Did I say what?

The Court: Didn't you say this morning you made them for the purpose of giving testimony?

A. No, I didn't say that.

Mr. Vaughn: I believe that's all. That's all, sir.

Redirect examination.

By Mr. Seegers:

Q. Mr. Koob, did you make a very recent examination of the numbers on the houses out in the 4500 and 4600 block on Labadie avenue?

A. I got them a half hour ago.

[fol. 58] Q. Half hour ago. And will you state again, so there will be no question about it, the numbers of the houses in those 2 blocks now occupied by Negroes?

A. Shall I give the numbers?

Q. Do it now.

A. They are 4562, and 4608, 4610 and 4614. With the exception of 4600, which is the—

Q. Well, excluding the present piece of property, yes. Now, within the scope of your memory have those 4 pieces of property just enumerated by you been occupied by other than Negroes?

A. No.

Q. So that for the entire period that your memory goes those 4 pieces have been entirely occupied by one or another Negro family?

A. That's right; as long as I have been associated with this organization.

Q. What type of houses are all these houses we are talking about; are they single dwellings, or flats, or what are they?

A. Well, one I believe is a flat; it was formerly a dwelling, it may still be a dwelling; that's 4652. 4608 is a cottage, and 4610 is a cottage, and 4614 is a bungalow type cottage.

Q. Single dwelling?

A. That's right.

Q. Now, Mr. Koob, do you know of your own knowledge whether or not the property at number 3562—or, 4562, 4608, 4610 and 4614, were those properties included in the restriction agreement introduced in evidence this morning?

A. They were not.

Q. Mr. Koob, how many years experience have you had in connection with the signing of these covenant or restriction agreements?

A. I should say that I have had some 18 years.

Q. When you have one of these covenants or restrictions signed up do you ever find that a certain individual may own more than one lot in the particular area being restricted?

Mr. Vaughn: If the Court please, I object to that as being wholly incompetent; I can't see the purpose.

The Court: Overruled. Let's see what it is.

Q. Do you ever find, Mr. Koob, within any area sought to be restricted you find some individuals or individual who own more than one lot?

A. Oh yes.

[fol. 59] Q. When you find that situation occurring do you have that person sign the covenant for each lot that he owns, or sign it only once?

Mr. Vaughn: Wait a minute.

A. He signs it once.

Mr. Vaughn: I object to it.

The Court: Sustained; immaterial.

Mr. Vaughn: It's also leading.

The Court: What they do generally in other cases we don't care about here.

Q. Mr. Koob, in this particular case did any of the signers own more than one lot?

Mr. Vaughn: If the Court please, there's no showing Mr. Koob had anything to do with the signing of this covenant.

The Court: This covenant was signed when?

Mr. Seegers: 1911. If the Court will permit me to say what I started to say, the purpose was to show, the Court called for evidence as to the proportion of lots signed up.

Now, we can not get a true picture of that, take for instance a covenant shows only 33 people sign, and that there are 45 different lots in this section; how can we get the proportion unless we have evidence to the effect that a person signing more than one lot signs only once, or more than once?

The Court: You can have such evidence, but Mr. Koob doesn't know.

Mr. Seegers: The objection was sustained on the ground it was immaterial, your Honor.

The Court: Yes, it was immaterial; and you asked when it was written up, when it was prepared, and he was only 7 years old then.

Q. Mr. Koob, on cross-examination you were asked this question by Mr. Vaughn: do you have an idea about how many pieces of property in the 45- and 4600 blocks of Labadie avenue were not included in this restriction agreement. Do you remember that question?

A. Yes.

Q. You may answer that question now, and give your best recollection.

Mr. Vaughn: I object to it, your Honor. He said he didn't know.

The Court: Sustained. He said he didn't know.

[fol. 60] Q. Do you have any knowledge as to the approximate number?

Mr. Vaughn: Object to that for the reason I asked him the same question; he said it would be a guess. Approximately the same question; that he wouldn't want to guess at it.

The Court: I don't want you to guess at it. Have you made any examination of the records yourself?

A. I would say I have had; I can't answer it without referring to them.

The Court: Very well; he can't answer it. Do you know how many lots there are in the 4600 block altogether?

A. How many lots there are?

The Court: Yes, sir.

A. Frankly I don't.

Mr. Seegers: I have the plat books under subpoena, your Honor.

The Court: Very well.

Q. How many separate and distinct signing of signatures or seals appear on this covenant?

Mr. Vaughn: Just a minute; the covenant is the best evidence.

The Court: That's merely a mathematical computation.

Q. Have you counted them?

A. Yes. 33.

The Court: You may check that if you wish. Here is the copy of it.

Mr. Seegers: I am merely trying to get the mathematical figure before the Court.

Mr. Vaughn: Yes; but I understand the way to get it is from the record itself.

The Court: Well, the objection is overruled; it is merely a matter of counting, and we have a copy here. You can count it, if you wish; check up on that. It saves me the trouble counting it, that's all. I would be glad to have somebody count it.

Mr. Vaughn: All right, your Honor.

The Court: Proceed, sir.

[fol. 61] Q. Mr. Koob, with respect to the questions on cross-examination involving these notes that you prepared, did you prepare these notes for the purpose of testifying in the case?

A. No, I did not.

Q. Did you prepare these notes for the purposes of trial of the case?

A. I don't quite—elaborate on that.

The Court: He testified he prepared them to assist you in the trial of the case.

Mr. Seegers: That's all.

Retross-examination.

By Mr. Vaughn:

Q. Well, you are interested personally in this case, aren't you?

A. Yes, sir.

The Court: Don't argue with him, please sir. He stated he prepared them to assist counsel, and is president of the association and all that; let's not argue about that.

Mr. Vaughn: My purpose, your Honor, I just want to show his interest.

The Court: Well, you asked him that before, and he has shown his connection with this organization and has shown he prepared this for the purpose of assisting counsel; to that extent he is personally interested. He isn't personally interested in the sense—(to the witness)

— You don't own any property in this block, do you, Mr. Koob?

A. No, I don't, your Honor.

The Court: Doesn't own any property in this block.

A. I show you this copy, Mr. Koob;—

The Court: Are there 33?

Mr. Vaughn: Yes, there are 33, your Honor.

The Court: All right.

Q. —ask you if you know any of the persons on there.

A. Do I know any of the persons?

Q. Yes; any of the persons whose names are signed on there.

A. You mean—I know several persons who signed this, but they, the signers that I know are dead. I know, to enumerate them,—

[fol. 62] Q. No, I didn't ask you that. So, as I understand you, the persons whose names are signed there that you knew are now dead?

A. That's right.

Q. That's correct. Thank you.

A. I know they are legal recipients of the property.

Mr. Vaughn: Move to strike out the last, your Honor; voluntary.

The Court: Sustained; strike it out.

Mr. Seegers: That's all.

Questions by the Court:

Q. As I understand, you say there's only one house occupied by colored people in the 4500 block?

A. That's right.

Q. Only one?

A. That's right.

Q. And that's between Taylor and Euclid?

A. 45 and 46.

Q. Oh, that's between 46 and Taylor?

A. That's right.

Q. One family?

A. One family.

Q. How about between Taylor and Newstead?

A. Between Taylor and Newstead there are none.

Q. None at all?

A. None at all.

The Court: All right. That's all.

MARTIN C. SEEGER, sworn, on Direct Examination by Mr. Seegers in Behalf of Plaintiffs, testifies:

Q. Will you state your name, please?

A. Martin C. Seegers.

Q. Where do you live, sir?

A. 4731 A Maffitt avenue.

Q. How long have you lived there?

A. 46 years.

Q. Do you own that property?

A. Own that property.

Q. Where did you live before you moved to this piece of property?

A. 4604—or -40 McKeever place, now known as Elmbank avenue.

Q. Now, Mr. Seegers, with respect to 4600 Lahadie avenue, how far away from that point do you now live?

[fol. 63] A. Oh, 1, 2, 3—3 blocks and a half.

Q. Is your property located within the territory outlined by Mr. Koob as being covered by the Marcus Avenue Improvement Association?

A. Yes, sir.

Q. Have you been or are you now a member of the Marcus Avenue Improvement Association?

A. Yes.

Q. How long have you been a member?

A. Since either 1923 or 1924; I ain't so sure about that.

Q. Now, how far is this address on McKeever, now Elm-bank, from 4600 Labadie?

A. Well, that would be Greer, Labadie avenue; two blocks.

Q. Two blocks. And during what years did you live on McKeever?

A. From 1896 to 1899.

Q. Is your memory fresh with respect to events that occurred during those years, at that point?

A. Yes, sir.

Q. Are you familiar with the 4500 and 4600 blocks of Labadie?

A. Yes.

Q. For how long a period have you been familiar with those 2 blocks?

A. For 49 years.

Q. Now, Mr. Seegers, going back the 49 years that you can remember of 4500 and 4600 Labadie, were there any Negroes living in either of those 2 blocks?

A. I only recall, either '23 or '24, that I got the knowledge of them Negroes being there. I did see some, but I wouldn't try to fix the date.

Q. But you are sure that since 19—well, have you known of any Negroes to move in there, into either of those blocks, since 1923 or 1924?

A. No.

Q. Well, how long prior to 1923 or '24, if you can, do you have an independent knowledge of Negroes living in those 2 blocks?

A. Well, yes, I did see some there before that. But just how long I couldn't venture to say.

Q. Well, when you were living on McKeever in 1896 and '99 do you remember any Negroes living in Labadie avenue block 4500 and 4600?

A. No; I can't remember that.

[fol. 64] Q. During your life in that neighborhood have you seen the 45- and 4600 blocks of Labadie fill up—

A. Oh yes.

Q. —with residences? What were the race of people which built up those 2 streets during your memory?

A. Whites.

Mr. Seegers: I believe that's all.

Cross-examination.

By Mr. Vaughn:

Q. What is your name, sir?

A. Martin C. Seegers; S-e-e-g-e-r-s.

Q. And your address, Mr. Seegers?

A. 4731 A Maffitt avenue.

Q. What business? What business are you in?

A. Well, right now I am only a watchman. Used to be a clothing cutter by trade. Was until recent years.

Q. When did you move from what is now Elmbank avenue?

A. In 1899, I think, in October.

Q. Did you live close to Easton avenue on Elm avenue?

A. Close to Easton avenue?

Q. Yes, sir.

A. Elmbank runs the same as Easton avenue does; it's at least 10 or 12 blocks away from there.

Q. 10 or 12 blocks north?

A. North.

Q. When did you first become a member of this improvement association?

A. Either '23 or '24.

Q. Was that when it was organized?

A. No; it was organized in 1910.

Q. 1910. Do you mind telling us what induced you to become a member of that organization?

Mr. Seegers: If the Court please, I object to that for the reason it's immaterial and irrelevant.

The Court: He may answer it if he wishes. You may answer if you wish.

A. Why, simply to keep up the standards of the neighborhood.

[fol. 65] Q. Well, you mean by that that you wanted to keep the neighborhood white?

A. Not only that; keep away slaughter houses, junk shops, anything that was objectionable.

Q. Well, do you class colored people as objectionable along with slaughter houses?

Mr. Seegers: I object to that for the reason it is argumentative.

The Court: Sustained.

Mr. Vaughn: I would say my one, my purpose is to ascertain the mind of this witness. I know your Honor's rule, but I am doing that for the purpose of the record.

The Court: We don't want to get in such discussions as that, comparing colored people to slaughter houses, things of that character; we want to keep all such things as that out of the case. I am sure he has no such idea in his mind.

A. No.

The Court: It isn't a question of them being objectionable; it is a question of whether or not they violated the contract the parties made between themselves, regardless of everything else; that's the only question in the case. You don't have to be a nuisance to violate a restriction.

Mr. Vaughn: I don't know that I quite understand, your Honor.

The Court: I say you don't have to be a nuisance to violate a restriction.

Mr. Vaughn: I am addressing my question now to your Honor's remark; as I understood that that is the only question in the case.

The Court: The question in the case is whether equity would enforce this contract between the parties; that's the question in the case, of course, under the circumstances as shown by the evidence. And of course your constitutional questions are in the case, too.

Mr. Vaughn: Thank you, your Honor.

Q. Do you hold any office in this association?

A. A member of the board of directors.

Q. How long have you been such?

A. Since the first of the year.

[fol. 66] Q. As such member of that board, or as a member of the organization, did you have any part in the effort of this association to keep the board of education from turning over the Cote Brillante school to Negro children?

A. Yes. On my own volition, though.

Q. Are you acquainted with Marcus avenue from Easton avenue north?

A. Yes, sir.

Q. How far north on Marcus avenue do you say Negroes are now living, north of Easton avenue?

erations which I regard as considerations of defense until a later time.

Mr. Houston: If Your Honor please, I think the character of the neighborhood is a matter of the plaintiff's case, as much as anything else, and for that reason I think that I respectfully submit that this is within the scope of the examination.

Your Honor has ruled on that point?

The Court: Yes.

Mr. Houston: All right.

Now, then, may I ask Your Honor, in the interest of saving time, that I may proceed out of turn with this witness so that I may dispose of her completely at this time, making her, or calling her, in substance, as an adverse party under the rules, to proceed and finish with my examination with her?

The Court: I will ask her to do that, as part of your case.

Mr. Houston: All right.

By Mr. Houston:

Q. What price did you pay for your property, Mrs. 120 Hodge?

A. \$4,350, I think.

Q. And at that time did you have a garage, or was there a garage?

A. There was no garage.

Q. Was there electric light or gaslight?

A. No, there wasn't any in that section of the city at that time. The gas light, but there was no electricity up that way.

Q. Was it hot air, steam or—

A. Hot air.

Q. Hot air heat. And the size of the house is—what?

A. Well, it is 20 feet on Bryant Street, and 30 feet 10 inches on the alley that runs that way, and an 18 foot alley that runs in back.

Q. And the depth?

A. Well, this I can't tell you exactly just what it would be.

Q. How many rooms?

A. Six rooms.

Q. A finished basement, or unfinished basement?

A. Just what do you mean by "finished" or "unfinished"?
Concreted, or what?

121 Q. No, I mean like they finish it for recreation purposes.

A. No, no; not that, no—it was concreted throughout.

Mr. Houston: I will ask this question, Your Honor, and Your Honor can rule on it as to whether I may ask it.

I ask the question because I want to explore the limits of Your Honor's ruling. I mean, I am not trying to be contumacious, but at this time I am trying to determine—

The Court: You may state your question.

By Mr. Houston:

Q. Mrs. Hodge, have you any children?

A. No, sir.

Q. And Mr. Hodge has no children?

A. Certainly not.

Q. Well, there might have been a first marriage.

A. That was our first marriage, for the both of us.

Q. All right. There is nobody left in your family, then, except you and Mr. Hodge?

A. That is all that lives there, yes.

Q. Do you occupy the house alone, or have rooms?

A. No, we occupy it alone.

Q. Now, you have made no attempt to get the Assyrians out, have you?

A. Why, no, we have not.

Q. Or the Italian people out?

122 A. No, sir.

Q. Do you know anything about the Assyrians as to whether they have negro blood in them or not?

A. Well, I wouldn't think so, not by their looks.

Q. So that you judge people by their looks, is that correct?

A. Well, I don't go into their case history to find out where they came from, I accept them as they are.

Q. Does that mean if a very fair person comes to you and says that they are not negroes, that you would accept them as they are?

A. Says they are not negroes?

Q. Yes.

A. Well, I don't know whether I will accept them or not.

Q. You know nothing about the history of the Mediterranean peoples?

Mr. Gilligan: If Your Honor please, I think it is entirely out of all range, I think I shall object.

The Court: Sustained.

Mr. Houston: Exception noted.

Mr. Urciolo: Your Honor, I think it might be in order to state at this time that I expect to produce tomorrow morning expert testimony as to the racial characteristics of the Mediterranean peoples.

123 The Court: What does that have to do with this situation?

Mr. Urciolo: I meant that——

Mr. Houston: What will it have to do?

Mr. Urciolo: It means this: That, for example, my meager studies as an anthropologist have shown that all Mediterranean peoples have approximately five to ten percent colored blood and I expect to bring an expert to testify to that effect.

The Court: That is all right, but that is not before the Court now.

By Mr. Houston:

Q. Mrs. Hodge, your house is the same type of construction as the houses beginning at 154, which is not covenanted, is that true?

A. I don't know, because I have never been inside of them.

Q. Outwardly?

A. Outwardly, they have porches, the same as we do, but anything else, I know nothing about.

Q. Outwardly, the houses 154, 156, 158 and 160 have the same general appearance as your house, 136?

A. Well, inasmuch as the porch, I don't know whether this has a bearing on it, but they do have an entrance to their cellar from the front, which we do not have.

124 Q. The same number of stories?

A. Yes, and I suppose the same number of rooms, but I have never been in them.

Q. The same number of stories; they have the same outward type of set of windows and the same decorations?

A. Yes, the same thing.

Q. Now, how long after you bought were the houses from 142 to 152 built?

A. Why, I think they started to break the ground there about two weeks after I went in the house, but they were not completed, of course, until sometime later, and—Your Honor, I would like to make one statement to Mr. Houston right now.

The Court: No, just answer the questions.

The Witness: Well, I have answered the question. There is something I wanted to say.

Mr. Gilligan: I think what she had in mind was as to the original owner of the houses. She omitted one and she wanted to get that into the record.

The Court: Is that what you wanted to say?

The Witness: Yes, sir.

The Court: You may make your statement.

The Witness: In naming the original owners, I omitted the Luskeys at 148. You see, they bought one of the houses that I was being questioned about, one of the last 125 built ones, 148. They were original owners.

By Mr. Houston:

Q. All right; 142 to 152 were begun in 1909 and finished in the ordinary course of construction, is that right?

A. Yes.

Q. Now, the Luskeys were original owners of 148?

A. Yes, sir.

Q. Now, can you tell me, Mrs. Hodge, whether the majority of persons who were original owners are living or dead, now?

Mr. Gilligan: I object again, if Your Honor please, I think it has no point whatever in connection with this case.

The Court: Sustained.

Mr. Houston: Your Honor, of course, in view of the rule, I do not have to note my objection, but for the purpose of the record—Your Honor realizes I am exploring.

The Court: You have automatically an exception to all adverse rulings.

Mr. Houston: All right, Your Honor.

I have no further questions of Mrs. Hodge at this particular moment. I am reserving the right to recall her.

The Court: As your witness?

Mr. Houston: As an adverse party, under the rules. 126

The Court: We will see when the time comes.

Mr. Gilligan: Even if you called her as an adverse party, she might be adverse, but still would be called as your witness.

Mr. Houston: But without my vouching for her.

Mr. Gilligan: She does not have to be vouched for by you.

I think that is entirely in order, in the light of the remark he made.

Mr. Houston: I have finished, Your Honor, with the right to recall.

Mr. Gilligan: Mrs. Hodge, as to the question of price of your property—

The Court: Wait a minute.

Mr. Gilligan: Pardon me.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hodge, you have read this complaint, before you signed it?

A. Why, certainly.

Q. How old are you, Mrs. Hodge?

A. How old am I?

Q. Yes.

A. 63.

Q. Mrs. Hodge, I understand that there are then
127 four original owners left, according to you?

A. Yes, sir.

Q. They are yourself, Mr. Wrightsman, Mr. Lanigan and the Luskeys?

A. Yes, sir.

Q. Now, isn't it a fact that Mrs. Luskey—

The Court: Pardon me, but take your finger away from your mouth so we can hear you better.

Mr. Urciolo: Sorry, sir.

By Mr. Urciolo:

Q. Is it not a fact, Mrs. Hodge, that the original Mrs. Luskey is dead?

A. The original Mrs. Luskey?

Q. Yes.

A. Oh, no; you mean the one that occupied 138?

Q. That occupies 148, now.

A. Now, she is not dead, the same one is in there.

Q. Isn't that Mrs. Luskey, Mr. Luskey's second wife?

A. No, sir.

Q. His first wife?

A. First wife so far as I know.

Mr. Gilligan: I must object to the line of questioning, if Your Honor please. I do not see where that has the slightest bearing on the issues in the case.

The Court: Sustained.

128 Mr. Urciolo: If Your Honor please, I am merely asking—

The Court: I understood the question.

Mr. Urciolo: She said the Luskeys were the original owners. It was my understanding that the present Mrs. Luskey was the owner's second wife.

The Court: What is your next question?

Mr. Urciolo: The next question—

By Mr. Urciolo:

Q. The Wrightsman- are original owners?

A. They were the original owners, so far as I knew, Mr. Urciolo, because they were there when I came into my home, and so far as I know they were the original owners, yes.

Q. Mr. and Mrs. Wrightsman?

A. Yes, sir.

Q. Both are now living?

A. No, Mrs. Wrightsman has passed away.

Q. Mrs. Wrightsman has passed away?

A. Passed away last February.

Q. So, consequently, as to that house, the original grantees are no longer there?

A. Mr. Wrightsman is still there.

Q. One is still there?

A. Yes, sir.

Q. All right. Now, as to the Lanigans, Francis M.

129 Lanigan, you say he was an original owner?

A. Yes, sir.

Q. Is he still there?

A. No, but his daughter still occupies the home.

Q. The daughter was not an original grantee, was she?

A. No, but still in the hands of the Lanigans.

Q. Therefore, assuming as you stated that Mrs. Luskey is also an original grantee, then there are two original grantees out of the twenty there, is that correct?

The Court: That is argumentative.

Mr. Urciolo: I withdraw the question, Your Honor.
Sorry.

By Mr. Urciolo:

Q. Mrs. Hodge, who sold the Hurd house, 116 Bryant Street?

Mr. Gilligan: If Your Honor please, I object to that question. If he wants to establish that, let him establish it in a way which is proper. I do not see that this has anything to do with it, this witness.

Mr. Urciolo: Here is why I ask the question: My defense—after all, I am only a defendant in the second case, that is why I so strenuously objected to the cases being joined, my defense is that my houses were not sold until longer after the house at 116 was sold to Hurd. If he is a negro,—if he is not a negro, or an Indian, then, of course—

The Court: That is your defense?

Mr. Urciolo: That is my defense.

The Court: And you are not putting in your defense now?

Mr. Urciolo: No, I am asking her for the purposes of the record. If I sold the Hurd house—

The Court: Objection is sustained.

Ask your next question.

By Mr. Urciolo:

Q. Mrs. Hodge, when you filed suit for 116 Bryant Street in the so-called Hurd case, did you attempt to get other owners as plaintiffs?

A. I didn't attempt to get them because we knew that Mr. Hurd moved in, as I stated yesterday, we contacted our lawyer, Mr. Gilligan, because all the plaintiffs were ready and they met at my house. I did not attempt to go out.

Q. Who are the plaintiffs?

Mr. Gilligan: They are in the record.

Mr. Urciolo: They have been changed, Your Honor.

The Court: The record will show who the plaintiffs are, of course.

By Mr. Urciolo:

Q. Did you try to contact other owners of those 20 houses?

A. Yes, sir, I did.

131 Q. Whom did you try to contact?

A. Mr. and Mrs. Wrightsman, Mrs. Wrightsman was alive but critically — at that time, but I contacted them.

Q. And did she refuse to sign?

A. Well, they refused on the ground that Mrs. Wrightsman was critically ill, and they didn't want to appear in court, but they were ready to sustain us so far as the money was concerned, and they have.

Q. Whom else did you ask to join, of those 20 owners?

A. Mrs. Garzoni.

Q. Did she refuse to sign it?

A. Well, Mrs. Garzoni doesn't own the property, her mother owns the property and was ill at that time.

Mr. Gilligan: I merely want to make this plain, that all that was gone over by Mr. Houston and is definitely merely a repetition.

The Court: I do not see that there is any occasion for going over the ground that Mr. Houston has covered.

However, I understand that —

Mr. Urciolo: I am defending my own case, and necessarily; I only have an interest in one case.

The Court: What is the question?

Mr. Houston: This is an examination about 116 Bryant Street, in the case in which Mr. Urciolo is not involved. I take it he may be developing his examination in his
132 own defense, for which I am not responsible; but so far as Mr. Hurd's interest is concerned, then I respectfully want the record to show that we object to any examination as to 116 Bryant Street or as to Case 26,192, and that we are not bound by any answers given under this examination.

The Court: You may proceed.

Mr. Urciolo: Thank you.

By Mr. Urciolo:

Q. Mrs. Hodge, whom else did you ask to join, the 20 owners in that section?

A. Mr. Perdue.

Q. Mr. Perdue?

A. Yes, sir.

Q. Did he sign?

A. No, he kept promising to do so, but never came to do it and I didn't ask him any further questions.

Q. Whom else?

A. That is all. That is, on the original case, 116, Mr. Hurd's case, that is all.

Q. Did you ever contact me or Mrs. Urciolo, if she would join in putting them out?

A. I did not.

Q. You did not?

A. No, sir.

Q. Thank you. I have one other question, I think.

133 You have stated, as I recall, that the Hurd's were colored people.

A. I stated it merely because Mr. Hurd told me himself that he was a negro and I asked about his wife and he said that she was a negro, so I couldn't do any more than state what Hurd said.

Q. In other words, you have never seen his wife?

A. Never, until today. I think I saw Mrs. Hurd, I believe she is.

Q. I speak as of the time you filed suit.

A. No, not her. I took his word for it.

Q. In one of your answers, if you recall yesterday afternoon, with reference to certain persons who moved in 144 Bryant Street, and finally were asked to move out, you stated they were definitely negroes.

A. They certainly were definitely negroes.

Q. In other words, there are—you make a distinction between negroes and some that definitely are negroes, and some that are slightly negroes?

A. Well, I consider that they all—no matter how dark or light they are,—They were very dark colored people.

Q. Now, you had a conversation with Mr. Savage?

A. Mr. Savage?

Q. Yes.

134 A. Yes.

Q. Did you ask him if he was a negro?

A. No, I could see that he was.

Mr. Urciolo: I don't want to have to ask that the record be read, but my understanding yesterday was that she stated that she asked if he was a negro.

The Witness: No, I did not.

Mr. Urciolo: I will reserve that.

By Mr. Urciolo:

Q. What else did you tell Mr. Savage?

A. Well, to be perfectly frank, I told him that I thought he paid too much money for his house, as I understood what he paid for it; and that it was very badly in need of repairs, that was according to the people who lived there formerly—your tenants.

Q. What else did you tell him?

A. That is all.

Q. Did you tell him that Mr. Urciolo only paid four or five thousand for the property?

A. No, I didn't, because I don't know what you paid for it, Mr. Urciolo.

Q. You did not?

A. No, sir. I did say, however, that if he paid \$6500, he would have been paying a good price for it.

Q. Would you take \$6500 for yours?

135 A. No, I wouldn't, because my house is in tip-top condition.

Q. How much would you take for your house?

A. I wouldn't take anything for it.

The Court: Let's get along with the issues of the case.

Mr. Urciolo: Your Honor, I meant that, the reason I am asking is this, Your Honor, the allegation reads that the presence of negroes would be highly depreciative, would depreciate the value of the property.

Now, I think I should be allowed to ask in what way it would depreciate her property.

The Court: Well—

Mr. Urciolo: Read from paragraph 10:

“Plaintiffs aver that the above-mentioned and described deeds of Lots 133, 134 and 136, square 3125, to the respective Negro defendants are a nullity and of no effect, and said deeds and conveyances confer no property rights upon said defendants; that the contemplated occupancy of said property by the Negro defendants, as well as to permit the deeds and conveyances to remain a matter of record, will be injurious, depreciative and absolutely ruinous of the real estate owned by plaintiff, and will be harmful, detrimental and sub-
136 versive of the peace of mind, comfort and property rights and interests of plaintiffs and of other property owners, and said neighborhood will be-

come depreciative in value and undesirable as a neighborhood wherein white people may live. The injury to plaintiffs is irreparable and is incapable of ascertainment and compensation in damages, and the only adequate remedy is by way of injunction."

The Court: Well, it is not proper cross-examination. It may be your defense.

Mr. Urciolo: I would like to make this tender, Your Honor, for the purposes of the record.

I am tendering now a cash offer of \$8,700 cash to Mrs. Hodge. That is double what she paid for it in 1909.

The Court: You cannot make a tender like that until you are ready to make proof, and that will be in your defense.

Mr. Urciolo: Thank you, and may I ask, in line with the same defense, what rents these tenants paid? My defense is this: Rather, my purpose is this—that I want to show that the tenants on Adams Street in the same square in the adjacent block are paying double what the white tenants are paying—

The Court: I did not hear that subject opened in direct examination.

Mr. Urciolo: Thank you. I want to ask one more
137 question.

By Mr. Urciolo:

Q. Mrs. Hodge, how far is your house from the Hurd house?

A. Well, they are at 116 and I am at 136.

Q. Let me see, that would make them—ten houses.

A. I judge so.

Q. Approximately 20 feet each, that would make about 200 feet.

A. I guess so.

Q. Now, how near is the nearest colored person to you in the non-covenanted area?

A. 154 is the nearest one.

Q. Is that nearer to you than the Hurd house?

A. Well, I am at 136, that is—

Mr. Gilligan: That is a matter of arithmetic, and you ought to be able to figure that out yourself.

Mr. Urciolo: I am testing the good faith, Mr. Gilligan.

The Court: The objection is good. You have an exhibit that would show that, have you not?

Mr. Urciolo: May I inquire as to the rent that these tenants pay, Your Honor?

The Court: It has not been opened up in direct examination.

138 By Mr. Urciolo:

Q. Mrs. Hodge, would you please explain to me, I really am asking for information,—in your answer to Mr. Houston's questions, in answer to whether Mrs.—the occupants of 150, Mrs. Stewart, were Americans, you have stated "you guessed that they were Americans." May I ask what you meant by that?

A. I said that they were colored, but that I supposed they were Americans.

Q. I think your answer was "you guessed" they were Americans.

A. As a rule, they are.

Q. I mean, don't you know?

A. No, I don't know whether they are Americans or not. They are called it.

Q. But you know as to how white they are?

A. Yes, I knew, but I don't know the Stewarts, but I did say that they were colored people and I supposed that they were Americans.

Q. And what is your test as to how you can tell?

Mr. Gilligans: Americans, you mean?

By Mr. Urciolo:

Q. How you tell colored people?

A. Well, I have no specific test, Mr. Urciolo, for telling them; simply, you see they are colored, as a rule, you
139 know.

Q. Color?

A. And I think that there are different characteristics of colored people, possibly not all of them, depending upon how much white blood they have in them. Some, I believe, have more characteristics of white or colored, I will say.

Q. Well, I mean what are those characteristics?

A. Usually there is a characteristic around the eyes.

Q. Eyes?

A. And as a rule the nose.

Q. Nose?

A. Those are the two main ones, I would say.

Q. Any others?

A. No, not that I think of. Well, the mouth possibly.

Q. The mouth? In other words, you maintain you can tell a colored person from a white person by his mouth, the color of his skin, eyes or nose?

A. As a rule.

Q. As a rule. Sometimes you can't—

A. Sometimes you can't do it, but as a rule you can.

Q. In other words, you admit that you may be mistaken sometimes?

A. Possibly, yes, sir.

Mr. Urciolo: Thank you. No questions.

Mr. Houston: If Your Honor please, there is one
140 thing about the matter of direct examination which I got thrown off, by cutting off on my examination. I would like to go into the question of signing these papers by the plaintiff, inasmuch as Mrs. Hodge was the moving party.

Cross-examination (Resumed).

By Mr. Houston:

Q. Going to Case 26,192, Mrs. Hodge—

141 A. Which is that, the Hurd case?

Q. The Hurd case. Now, did Mr. Gilligan turn the papers over to you to obtain signatures?

A. He did not.

Q. How were those signatures obtained?

A. They were all signed, they met at my home, each one signed it.

Q. Who was present?

A. Mr. Gilligan—

Mr. Gilligan: You mean, in addition to the plaintiffs?

Mr. Houston: Let's find who was there.

Mr. Gilligan: She said they were all there to sign it.

The Witness: Every plaintiff signed it.

Mr. Houston: Who is "all"?

Mr. Gilligan: The plaintiffs.

Mr. Houston: If you are on the stand—

Mr. Gilligan: It is a trifling type of examination.

The Court: Do you want her to repeat the names of the plaintiffs?

Mr. Houston: That is right, sir. This happened to the deposition of the Italian plaintiffs. There is a very definite point to it. Mr. Gilligan knows it, because he was there at the deposition.

Mr. Gilligan: What?

Mr. Houston: Knows that the Italian plaintiffs
142 didn't know what they were signing, it wasn't read over to them. Some of them don't read English and there wasn't any notary there.

The Court: Your question is, Who was there?

Mr. Gilligan: She says "All the plaintiffs."

Mr. Houston: That is right.

The Court: And Mr. Gilligan?

Mr. Gilligan: I want to deny his statement that I know it is such a thing as he said. I don't know, at all. I want to get that into the record.

Mr. Houston: Let me get that.

Mr. Gilligan: You made the statement that I knew—

Mr. Houston: What?

Mr. Gilligan: That the Italians—

The Court: I think the answer to your question as to who was there, when she said "All the plaintiffs," I think that is sufficient without naming the plaintiffs.

By Mr. Houston:

Q. Who else was there?

A. Mr. Gilligan and Mr. Keefer, a notary.

Q. That is on 26,192?

A. If that is the Hurd case.

Q. That is the Hurd case.

A. That is right.

The Court: 26,192?

143 Mr. Houston: 26,192.

It is my teeth, Your Honor.

The Court: They make you talk double.

Mr. Gilligan: I must say those teeth are making him ask a lot of questions.

By Mr. Houston:

Q. Mrs. Hodge, that was Mr. Keefer, Mr. Gilligan and the plaintiffs?

A. Yes.

Q. On the Hurd case?

A. Yes, sir.

Q. When was that? I mean to say, approximately what time of day was it, or night?

A. It was at night.

Q. Now, let's go to the Urciolo case. That is the case as to Savage, Rowe and the rest of them.

Where was that signed?

A. Well, Mr. Gilligan was out of town and he brought the case to me and asked me to get it signed and I did get it signed by going to the different homes of the plaintiffs.

Q. Who went with you?

A. Nobody, I went alone.

Mr. Houston: That is all.

144 Further Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hodge, you took the paper to the various plaintiffs to get it signed?

A. I did.

Q. Then what did you do with it?

A. Took it home.

Q. Then what did you do with it?

A. Yes, then Mr. Keefer, the notary, came there, and I swore in front of him that I had been present when these were signed, or whatever it said at the bottom, signed my name and it was notarized by Mr. Keefer.

Q. Let's see the DeRitas, and Marchigianis were not present and didn't swear before Mr. Keefer?

A. No.

Q. Keefer took your acknowledgment that you saw it?

A. No, I didn't see Mr. and Mrs. Marchigiani sign it because they had to take it over to their home, they are away in Maryland, understand.

Q. But the DeRitas, Mr. DeRita didn't sign in front of Mr. Keefer?

A. No.

Mr. Urciolo: I think, Your Honor, that this calls for grounds for dismissal forthwith, since these people have never sworn to this complaint, or the plaintiffs be

145 withdrawn, one of the two.

Mr. Gilligan: I am afraid our friend is not familiar with the rules, if Your Honor please.

The Court: The complaint shows that it was sworn to by this plaintiff and purports to have — signed by not sworn to by other plaintiffs.

Are there any further questions?

Mr. Urciolo: Yes, sir.

By Mr. Urciolo:

Q. Mrs. Hodge, were these complaints read, was this complaint I am referring to, the Urciolo case, I had no interest in the other, — was that read to the plaintiffs, to the DeRitas and to the Marchigianis?

A. No, I didn't read it, but I had read it and explained it to —

Q. You read it?

A. Yes.

Q. And explained it to them?

A. Yes.

Q. All at the same time?

A. No, at different ones. I know that Mr. and Mrs. Marchigiani read it because they took it out there and read it, I am sure of that.

Q. How about Mr. and Mrs. DeRita?

A. No, they didn't read it because I explained it to
146 them.

Q. Together or separately?

A. Together.

Q. What time of night was it?

A. It was in the evening.

Q. And how about the Giancolas?

A. Mr. Giancola didn't sign it in front of me, Mrs. Giancola did.

Q. Did you explain it to her?

A. Yes, I explained it to her.

Q. In other words, Mrs. Hodge, you are the big chief around there?

A. I guess that is what you might say. I seem to have been looking after the place for more than 20 years.

The Court: You have answered.

Mr. Urciolo: Your Honor —

The Court: She has answered.

Mr. Gilligan?

Redirect examination.

By Mr. Gilligan:

Q. You stated you paid \$4250 for the property when you bought it?

A. I think that was right, Mr. Gilligan.

Q. Have you put any improvements upon it since that time?

147 A. Yes, we have a great many improvements.

Q. What would you be willing to sell it for today?

A. I wouldn't sell my house under \$12,000.

Q. And then would not sell it to colored, or would you?

A. No, I would not.

Q. Was there a meeting of the plaintiffs in your house or elsewhere before this second case was brought?

A. Before the second case was brought—yes, sir, there was, in my home.

Q. And was the question discussed there as to the various defendants?

A. Yes, sir.

Q. And what was the instruction given to me at that time as the attorney for these plaintiffs?

A. Well, for you to bring another suit the same as the first one.

Q. And then you say I turned over to you the complaint?

A. Yes, sir.

Q. And explained to you what to do?

A. Explained to me, and I read every word of it.

Q. Did I say anything to you about making sure the plaintiffs understood what they were signing?

A. Yes, sir, you did, very specifically explained it
148. to me.

Q. Just because Mr. Urciolo brought up the question about your interest, just how did you go about taking hold of this matter in connection with the whole community when the matter of the enforcement of the covenant in your block came up?

A. You mean now, or earlier?

Q. Any time.

A. Well, I don't know, it is just one of those things. I got into it, I guess, and the different ones, as soon as they would hear or know of a colored person moving, they always called me and I just simply assumed the responsibility, I guess, because they wanted me to.

Q. Did you get in touch with any of the people in the community, citizens associations, or executive committee of owners?

A. I did earlier and later, too.

Q. Did they cooperate with the people on your block?

A. They certainly did.

Q. Are all the plaintiffs, knowing the costs, and others in the block, helping to take care of expenses of this suit?

A. Certainly.

Mr. Gilligan: That is all.

149 Further cross-examination.

By Mr. Houston:

Q. Mrs. Hodge, how much has been contributed to date by each one?

A. To date, we have paid a retaining fee of \$85 which I turned over to Mr. Murphy.

Q. From whom did you collect?

A. From whom did I collect?

The Court: Keep Mr. Murphy out.

(Prospective witness leaves the courtroom)

The Witness: Well, Mr. Wrightsman.

By Mr. Houston:

Q. And he paid how much?

A. \$20. Miss Lanigan—

150 Q. Excuse me, Miss or Mrs.?

A. Miss Loretta Lanigan, \$15.

Q. \$15, and Mr. Wrightsman \$20?

A. Yes.

Q. All right, next?

A. Mr. and Mrs. DeRita, \$10.

Q. All right.

A. Mr. and Mrs. Giancola \$10.

Q. All right.

A. Mr. and Mrs. Marchigiani, \$10.

Q. All right.

A. Mr. and Mrs. Luskey, \$10.

Q. All right.

A. Mr. and Mrs. Hodge, \$10.

Q. Let's see—all of that has been collected to date?

A. All that has been collected. Of course, we expect to pay it when the case is finished.

Q. But that is all that is collected to date?

A. Yes.

Q. So when you say everybody else was contributing, you were slightly in error, were you not?

A. I don't know, I said everybody in the block.

Q. In other words, nobody contributed except the persons that you have listed?

151 A. That I have listed.

Mr. Houston: That is all.

Mr. Gilligan: That is all.

Whereupon—HENRY K. MURPHY was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Gilligan:

Q. Will you state your full name, Mr. Murphy?

A. Henry K. Murphy.

Q. And your address?

A. 42 Rhode Island Avenue, N. W.

Q. Your business?

A. Railroad paymaster.

Q. Directing your attention to the suits which were filed in Bryant Street, are you familiar with those, the filing of those suits?

A. Yes, sir, I am.

Q. In what capacity have you been familiar with that, and any other part of the community there?

152-154 A. As executive secretary of the Committee of Owners.

Q. And how old a committee is that?

A. About 22 years old.

Q. About 22 years old?

A. Yes.

Q. And has the executive secretary of that executive committee of owners, have you or the committee, and/or the

committee taken part in all of the cases that have been brought in that community?

A. Yes, continuously.

155 Q. Mr. Murphy, do you know whether there are any negroes or colored people living in the part of the territory east of the 100 block of Bryant Street on First Street or to the east of First Street to North Capital Street, of your own knowledge?

A. There is one colored occupant, that is at 2213 First Street, N. W., and they are under court order to vacate.

Q. Do you know whether or not any negroes have moved into the 2100 block of First Street, N. W.?

A. Yes, two or three.

Q. Any in the 2300 block?

A. No.

Q. 2400 block?

A. No.

Q. Any on Channing Street between North Capitol and First?

A. No.

Q. Bryant Street between North Capitol and First?

A. No.

Q. Adams Street between North Capitol and First?

156 A. No.

Q. Adams Street between North Capitol and First?

Mr. Houston: I object to this testimony. When he at first established his familiarity with the neighborhood—

Mr. Gilligan: I did establish that by asking if he was familiar.

The Court: He was asked.

Mr. Houston: Is he familiar with every house in the neighborhood?

Mr. Gilligan: He is familiar with the complexion of the neighborhood over a period of 22 years.

Mr. Houston: I will grant that, and the other question, does he know if there are any—if he changes the form of the question, I have no objection, but to establish a flat categorical statement I say that you have not laid a proper foundation for it.

The Court: You will have an opportunity on cross-examination.

Mr. Houston: It is not a question of that, it is a question of a foundation.

By Mr. Gilligan:

Q. W Street, between North Capitol and First?

A. No negroes.

Q. V Street between North Capitol and First?

A. No.

157 Q. U, between North Capitol and First?

A. No.

Q. Rhode Island Avenue between North Capitol and First?

A. No.

Q. T Street, between North Capitol and First?

A. No.

Q. Are there any on North Capitol Street above Channing Street in this particular—over to Lincoln Road?

A. No.

Q. Are there any houses above Channing that are between North Capitol and First,—any houses to the north?

A. No, that is not improved for dwelling purposes.

Q. What is it?

A. The filtration plant lies north of Channing Street.

Q. How far does that go?

A. Up to Soldier's Home.

Q. Soldier's home is to the north of the filtration plant?

A. That is right.

Mr. Gilligan: I think that is all.

Cross-examination.

By Mr. Houston:

Q. First Street has usually been considered the dividing line between the white and the negro population, has it not?

158 A. Up as far as Bryant, and the white population extends on Bryant west from First Street about two-thirds of the distance to Second.

Q. But as a matter of division, is it not true that the real estate men in general, among them it is considered First Street is the dividing line between the white and negro population?

Mr. Gilligan: I object to the question as to real estate men, I don't think he can answer for real estate men.

Mr. Houston: Strike that.

By Mr. Houston:

Q. You have been involved and testified in several suits, have you not?

A. Yes.

Q. Have you not testified in these other cases involving Adams Street, that First Street was a dividing line, north of Rhode Island Avenue, between the white and the colored population?

A. From Rhode Island Avenue north, but including Bryant Street two-thirds of the distance towards second.

Q. But the 100 block of Bryant Street is not a white block, is it?

A. Not entirely white, it is preponderantly white.

Q. By "preponderantly" you mean in what proportion?

A. Two-thirds white.

Q. Two-thirds white, not three-fourths?

A. No, no. I think there are 20 houses running west from First Street that have the deed covenant and they are occupied by white people except where there is a violation of the covenant in there.

Q. You are counting as white the Italians and Assyrians?

A. Why, certainly.

Mr. Houston: That is all I have.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Murphy, why did you—what is the situation as to colored, between North Capitol and First, on S Street?

A. On S Street?

Q. Yes.

A. There are quite a few there, in violation of a deed covenant.

Q. Has the Committee filed suit to restrain these people from occupying these houses?

A. They are now in the course of preparing papers to file suit there. The agreement is in effect and what has happened is in violation of the agreement.

Q. Are there any negroes between North Capitol and First, on Seaton Place?

160 A. Yes, quite a few.

Q. Has any suit been filed by your committee to restrain those negroes from occupying their houses?

A. No, sir, there is no basis for a suit there. There is no restrictive agreement.

Q. No restrictive agreement?

A. On Seaton Place, the block you speak of.

Q. Mr. Murphy, in the 1800 block of North Capitol Street, are there any negroes?

A. One family in there. It is on the west side of the street, it is either 1810 or 1811, I am confused about the even and uneven numbers, but on the west side of the street, either 1810 or 1811.

Q. Have you made an attempt to get them out?

A. There is a restrictive agreement there that expired before they moved in. There was no basis for a suit there.

Q. Did you have occasion to go to that house and ask the owners there to join in the renewal of a covenant?

A. Didn't ask them, but I called on them and had a talk with them while the restrictive agreement was still in effect, but it expired, and the—reminded them that this restrictive agreement was in effect, and asked the question whether they had sold or were negotiating a sale to colored people. They denied that, but I got other impressions.
161

Q. Did you tell them that the Pastor from St. Martin's Church had sent you there?

A. No.

Q. You did not tell them that?

A. Oh, no.

Mr. Urciolo: Thank you, that is all.

Mr. Gilligan: I would like to ask one or two more questions where Mr. Urciolo got down far enough.

Redirect examination.

By Mr. Gilligan:

Q. What about Randolph Place, any action brought in Randolph Place?

A. Two suits pending there against parties who have violated the restrictive agreements.

Q. Is Mr. Urciolo one of the defendants in that case?

A. Yes.

Q. Are other members of his family also, do you know?

A. Yes.

Q. Mother and father and wife?

A. His mother, father, and wife—four Urciolos.

Q. Would you know whether or not Mr. Urciolo, in connection with the various suits that have been filed in this community, of ours, has been named as defendant in any other suits?

162 A. Yes, in the recent suit.

Mr. Houston: May I ask the materiality?

Mr. Gilligan: I want to bring out the fact that we have a very distinguished gentleman who causes most of the trouble in the community as defendant in that case, and also an attorney. I think it ought to be brought to the attention of the Court, all of it.

By Mr. Gilligan:

Q. Was he in the Adams Street case—

Mr. Houston: So far as I am concerned, if Your Honor please, I call your attention to 26,192 and point out the fact that Mr. Urciolo has not been and is not a party to that suit.

Mr. Gilligan: All right.

The Court: I have that in mind.

Mr. Gilligan: I have no other questions.

The Court: Did you answer about the Adams Street case?

The Witness: Mr. Urciolo was a defendant there.

Recross-examination.

By Mr. Urciolo:

Q. Mr. Murphy, how many other defendants were there in the Adams Street case?

A. I couldn't tell you from memory.

Q. The Urciolos?

A. There were others, Mr. Urciolo.

163 Q. About how many others?

A. Well, there were perhaps six or eight suits filed in that block at various times.

Q. Was I definitely in all those suits?

A. No.

Q. In how many?

A. At least one, and I am under the impression that there were two or three.

Q. And in these five or six houses, about how many altogether, roughly, how many defendants were there? You say there were two or three in each one, or four or five in each one?

A. There may have been between three and five in each one, the average, I would say, was about three or four.

Q. How many defendants were there in the Randolph Place suits?

A. Which suit do you refer to, the one against you?

Q. The one in which I was also a defendant, the one Mr. Gilligan referred to and asked you a question, if I was a defendant in the Randolph Place suit.

A. You and your wife and father and mother, that is four—the negro defendants, that is a suit involving several properties, and I would say that there are two negroes involved in each of the five or six violations there, that would make about 12 or 14 defendants.

164 Mr. Urciolo: 12 to 14 defendants, thank you.

Mr. Gilligan: That is all.

The restrictive agreement which is the basis of this case, reads as follows:

“Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any negro or colored person, under a penalty of Ten thousand dollars (\$2,000), which shall be a lien against said property.”

Mr. Gilligan: Then, if Your Honor please, in connection with that same case, there is a stipulation that the letter from J. M. Hurd to myself, dated July 25, 1944, may be received in evidence without formal proof. It is here initialed by the pre-trial Justice.

Also, in the 6th paragraph of the stipulation, it says, “The carbon copy of letter from Henry Gilligan to James M. Hurd, dated June 30, 1944, initialed by pre-trial Justice,

may be received in evidence without formal proof, provided the original of said letter is not available at the trial."

166 Mr. Gilligan: If Your Honor please, I would like to have these marked Plaintiff's Exhibits 1 and 2—no, 2 and 3.

The Court: The letter of June 30 may be marked Plaintiff's Exhibit 2 and the other Plaintiff's Exhibit 3.

(Thereupon, the documents identified by counsel as letter to James M. Hurd, dated June 30, 1944, signed by Henry Gilligan, and letter addressed to Henry Gilligan from James M. Hurd, under date of July 25th, were marked "Plaintiff's Exhibits Nos. 2 and 3," respectively, and by the Court admitted in evidence.)

167 Mr. Gilligan: This is dated June 30, 1944, and addressed to Mr. James M. Hurd, 116 Bryant Street, N. W., Washington, D. C.

"Dear Sir: On May 4th last, by deed from Francis X. Ryan and wife, recorded on May 9th as Instrument No. 12561 you and your wife, Mary I. Hurd, became the record owner of 116 Bryant Street, N. W. (Lot 114, — Square 3125) and moved into the premises. At the time you were on actual as well as constructive notice of the deed covenant prohibiting you and your wife, as Negroes, from buying, renting, leasing or in any manner occupying these premises. I have been in touch with Mr. Frederick Richmond at the District Title Insurance Company, 1413 I Street, N. W., when the deal was consummated, several times, and am informed by him that he is endeavoring to work out the whole proposition by finding you another house, so that you may remove from 116 Bryant Street amicably rather than be forced out through injunction proceedings. It has been my hope that we might have this matter adjudicated, but I am now putting you on notice that we must bring the question to an immediate conclusion. Therefore, if you have not satis-

fied me by July 7th (by nine A. M.) that your decision is to move amicably and that you have secured another location and will move by an agreed upon date, I shall prepare and file for the property owners in that block of Bryant Street an injunction suit and will make every effort to have the Court grant a preliminary injunction requiring you to move.

"It is my earnest hope that this suit may not be necessary, but I assure you it will be brought if I do not have definite assurance in the premises. You probably are informed that the District Court has granted two injunctions within the past two weeks in cases brought by me in the 2200 block of First Street and the 2,000 block of First Street, N. W. I shall be out of the city until Thursday, July 6th, at two o'clock. I trust you will call on me or get in touch with me, either personally or by letter, between two and five o'clock on the 6th.

"Yours very truly," signed "Henry Gilligan."

Mr. Houston: May I just make one inquiry, Mr. Gilligan, and that is, were you speaking about those two injunctions,—was that the Gospel Spreading Association?

Mr. Gilligan: Yes, which was reversed by the Court of Appeals later.

Mr. Houston: I wanted to make it clear.

Mr. Gilligan: Then, the reply of Hurd dated 116 Bryant Street, N. W., Washington, D. C., July 25, 1945, and signed by J. M. Hurd, and under the initials—

"Mr. Henry Gilligan, Attorney at Law,
Washington Loan and Trust Company,
Washington, D. C.

Dear Sir:

In connection with your threatened action to bring about removal of my wife and myself from premises known as 116 Bryant Street, N. W., Washington, D. C., for the sole reason that we are of Negro extraction, please be advised that we have no desire to litigate the matter and will be more than glad to move from the neighborhood in which we now find we are not wanted.

At the time we purchased said property from Mr. and Mrs. Francis Ryan, we examined the location and found that there were ten colored families living on Bryant Street; that Second Street between Adams and

Bryant streets were solidly colored; and that Adams Street, between Second and Third Streets was almost solidly colored. As a matter of fact, colored people occupy the homes on Adams Street on which our backyard at 116 Bryant Street borders. It was with the knowledge of this situation that we purchased premises 116 Bryant Street, N. W., from Mr. and Mrs.

170 Ryan, being under the impression and understanding that in a situation such as it exists on Bryant Street it was legally permissible for colored to occupy the property. We were greatly astonished when we received information that the people in this neighborhood desired that we be removed from the building which we purchased for our home.

As we have stated above, we do not desire to engage in any litigation with you people and we are making an effort to find another place to move to after which we will dispose of 116 Bryant Street, N. W., even if it means a financial loss to us. As you no doubt know, the situation in colored rentals is very difficult and it may take us some time to locate ourselves elsewhere. We have a proposition now to purchase another home which requires \$600 in cash. We are endeavoring to raise this amount so that we can purchase the other house, but have been so far able to raise only \$400 of this amount. If you will be gracious enough to give us sufficient time within which to either find a rental or within which to obtain sufficient funds to purchase another home, we will make every effort to move from the premises as soon as is humanly possible.

171 "We realize that if you permit us to continue in occupancy possibly the Court might hold that laches applies and therefore in order that you may be assured that no such defense will be interposed if a suit should be filed, this is to advise you that we will not interpose such a defense to any action brought. If the above statement is not sufficient to enable you to give us time within which to locate ourselves elsewhere, we shall be more than glad to provide you with any statement or document which you may feel necessary. We earnestly hope that you will give us due consideration in the matter and treat us with a little human kindness by at least giving us sufficient time within which to comply with your mandate.

The money that we invested in this house represents our lifetime savings and we would like to have the opportunity of selling the property after we vacate with as little loss as possible.

"Very truly yours,"

And it is signed "J. M. Hurd,"

That is dated July 25, 1944.

I merely call the Court's attention to the fact that the suit was not filed until November, several months later.

Mr. Houston: May I also state for the record that was not written by me. I do not share those sentiments
172 and never would have permitted him to write the letter if I had been his counsel at that time.

Mr. Urciolo: That is what I wanted to say, Your Honor. I think it would be appropriate for the purposes of the record to stipulate or state that I had no connection whatsoever with Hurd, or the sale thereof, or this letter.

The Court: It is not claimed that you did.

173 Mr. Urciolo: I understand that, Your Honor. I am nevertheless a defendant in the same suit, that is one of the reasons I object to the consolidation.

Mr. Gilligan: Call Mrs. Margaret Giancola.

Whereupon MARGARET GIANCOLA was thereupon called as a witness by and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Will you state your name, please?

A. Margaret Giancola.

Q. Do you and your husband own this property in which you live?

A. We do.

Q. What is that number?

A. 130 Bryant Street, N. W.

Q. How long have you owned it?

174 A. I bought that property in September of 1936.

Q. September of 1936. At the time you purchased it, were you aware of the fact that there was any restriction against anybody buying it other than white people?

A. Well, when I went to the title company, I found out there that there was a deed covenant, but the man who sold me the house also said that.

Q. Also told you the same thing?

A. Yes.

Q. So you bought it with the understanding that colored people could not occupy it?

A. That is right, sir.

Q. And you are one of the plaintiffs in this case?

A. I am.

Q. What is your color?

A. White.

Mr. Gilligan: If Your Honor please, I have to do it, because Mr. Houston has denied the color of the plaintiffs and defendants.

The Court: All right.

By Mr. Gilligan:

Q. Are you foreign-born or naturalized?

A. No, I was born in this country.

Q. So that you are a citizen of the United States?

A. I am.

175 Q. You are a plaintiff in both cases?

A. I am.

Q. And you are anxious for this Court to keep this block, as far as it is, under deed covenant?

A. Anxious to keep my home, and the block.

Q. You intend to stay there?

A. That is right.

Q. What did you pay for your home?

A. I paid \$4500.

Q. Have you done anything to it since, in the way of improvements?

A. When I first went in I put in a new heating system, started out with that, and changed all my electrical appliances; I tore down last year the wooden porches in the back and I made three rooms, made a big double garage, scraped my floors, and I have remodeled my kitchen into a modern

kitchen, and in all I have made a home so that I want to live in it.

Q. What would you sell it for?

A. There is no price, Mr. Gilligan.

Q. When these suits, these bills of complaints in the two cases were brought to your attention,—

Mr. Gilligan: I am doing this now, Mr. Houston, in order to save the necessity of bringing her back.

By Mr. Gilligan:

176 Q. (Continuing:) —did you go over the suit with your husband?

A. My husband is handicapped in this language to a certain degree, and he depends upon me to take care of those things. Naturally, I translate to him whatever I read or hear.

Q. You say you did?

A. I did.

Q. Go over the complaint in both cases?

A. I did.

Q. Did he understand, in your judgment, when he signed it he understood what he was signing?

A. He did.

Q. You knew what you were signing?

A. I knew.

Mr. Gilligan: I think that is all, if your Honor please.

Cross-examination.

By Mr. Houston:

Q. Mrs. Giancola, at the time that you purchased on Bryant Street, did you go look at this block before you signed the contract?

A. I didn't get you, Mr. Houston.

Q. Before you signed the contract for your house, did you go up on Bryant Street and look at the block?

177 A. Well, the first time I went on Bryant Street, I visited Mrs. Marchiagiani.

Q. She lived where?

A. Lived at 124 Bryant Street.

Q. Did you go there with the idea of buying on Bryant Street?

A. No.

Q. Well, when you decided to buy on Bryant Street, did you take into consideration the entire block?

A. Well, I would say yes, the way I was made to understand, I did.

Q. Did you inquire as to whether there was a covenant on any other house except yours, in that block?

A. No, I did not, at that time.

Q. Did you,—now, that is prior to buying, you did not make any inquiry as to whether there was a covenant on any other house in the block except yours?

A. That is right.

Q. Did you prior to the time you went to the title company make any inquiry as to whether there was a covenant on any other house in the block except yours?

A. No, except that I was under the impression, as long as there were that many whites there, I was safe, and I took it upon myself, if I could not sell it to colored, I didn't think others would be able to.

178 Q. That was assumed on your part, and you asked nobody for any information whatsoever?

A. That is right.

Q. Now, did you after buying, or after settling, before you moved in, make any inquiry as to whether there was a covenant on any other houses in the block excepting yours?

A. If there was any other colored?

Q. No. Any covenant, a covenant on any other house, in the block except yours, after buying, before moving in?

A. No, I didn't ask about any other house.

Q. So that when you bought, when you settled and took your deed, and when you moved in, the only property you knew about having a covenant on it was your own house?

A. Well, up to that time,—yes.

Q. Now, prior to the time that you bought, had you seen the negroes beginning at 154, down to Second Street?

A. I was told they were there, Mr. Houston.

Q. Did you inquire as to how they happened to be there, whether they were owners or whether they were tenants or the circumstances under which they were there?

A. No, I did not.

Q. Have you had any trouble with any of these people from 154 Bryant Street down to the corner of Second Street?

A. Well, I have so far found them, Mr. Houston,
179 that there would not be any reason to have trouble
with them.

Q. Then the answer is—

A. No.

Q. Have you had any trouble with any of these persons
that you claim to be negroes who have moved in east of 154
Bryant Street?

A. Well—no.

Q. No, and the answer there is no—is your answer no?

A. That is right, no, I have not had any trouble.

Q. Now, when you bought your house, did you make any
inquiry as to who was immediately back of you?

A. Yes, I knew that there was some white and some
colored back there.

Q. Immediately back of your house, were there colored
or whites at the time you bought?

A. Mr. Houston, I am under oath, and I must tell you the
truth, I worked up until a few years ago and I never
bothered who was back there.

Q. Well the answer is—

A. I believe there were colored people there, though.

Q. But, immediately back of you—

A. That is right.

Q. Now, have there been more colored people moving in
on Adams Street immediately back of you since you
180 bought your house?

A. I have never taken that much notice, Mr. Hous-
ton. I was not interested in that street.

Q. Were you ever advised,—when was the first time that
you had occasion, after buying your house, to investigate
whether there was a covenant on any other house on *any*
other house on Bryant Street?

A. When Mr. DeRita wanted to buy a home and asked
me, he was at that time employed by my husband and due
to the fact that he is handicapped in the English language,
I take care of that—I took care of that through the man
who sold me my home, and he was told that he also could
not sell to colored, and in the meantime Mrs. Marchegiani
had the same deed covenant, so I took it that it covered
us all.

Q. Just a moment; you had not inquired about the
Marchegiani house prior to that time?

A. No.

Q. At the time you bought?

A. No.

Q. When did the DeRitas buy?

A. I think that was in approximately '40, that is, to the best of my recollection.

Q. And that was the first time that you knew about a covenant on any other house in the block except yours?

A. That is right.

181 Q. When was the first time that you had occasion to consider whether there was a covenant on any house except the DeRita house, the Marchegiani house and your house?

A. Well, I think 144, we had rumors that that was being transferred to colored people.

Q. When was that?

A. Oh, I should say approximately two years ago.

Q. About 1943?

A. I believe so, I am not definite about it.

Q. All right, what happened then?

A. Well, I immediately contacted Mrs. Hodge, or rather, we got together about it.

Q. Which is correct, your second statement?

A. Well, I think—Mr. Houston, let's see, now, let me think a little bit. I can't remember, but I know we got together on that, Mr. Houston.

Q. All right.

A. There has been so much going on.

Q. You got together, that is, you and Mrs. Hodge?

A. And the rest of the neighbors.

Q. All right, and then what information did you get concerning the covenant?

A. Well, then, that really explained the fact that all of that property along there had a covenant up to 154.

Q. Did they tell you anything about Adams Street
182 at that time?

A. We did not discuss Adams Street, Mr. Houston.

Q. Now, do you visit Mrs. Hodge?

A. I do.

Q. Do you remember testifying before any deposition before Mr. Middlemiss and Miss Scarborough, about two weeks ago?

A. Yes, sir, I did testify.

Q. Do you remember being asked as to who you visited in the square?

A. I believe you did ask me, Mr. Houston.

Mr. Gilligan: I would like to ask Mr. Houston if he has the testimony here?

Mr. Houston: I should be glad—

Mr. Gilligan: I am now asking you to put it in.

Mr. Houston: The point is, Mr. Middlemiss, who is a reporter in the courts, who took a deposition, has not furnished us the transcript, and I should be very glad, I think, to produce it if I could. And I ask His Honor's permission to reserve that. I have been promised the transcript today.

The Court: You may recall her.

Mr. Houston: Yes, thank you.

By Mr. Houston:

Q. Your house is one of the houses that does not have a porch, that is correct?

183 A. That is right.

Q. The last one, as a matter of fact?

A. The last one of the three-storied ones.

Q. The houses west of you have how many stories?

Mr. Gilligan: For the Court's information, that is lot 808.

The Court: Yes, 808.

By Mr. Houston:

Q. The houses west of you, Mrs. Giancola, have how many stories?

A. Two stories.

Q. And those houses have porches, is that right?

A. That is right, Mr. Houston.

Mr. Houston: I think that is all I want to ask now.

The Court: Mr. Urciolo?

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Giancola, you have stated that you paid \$4500 for your house and that you would not sell it at any price?

A. I did.

Q. May I ask, then, to please explain to me what you mean that the presence of negroes will be highly depreciative of your property, in your complaint, and absolutely ruinous?

184 I mean to the degree that as long as they come in, white people will not buy and I would like to see that neighborhood stay white.

Q. Neighborhood?

A. Yes.

Q. What do you mean by "neighborhood"?

A. Right there where we live on Bryant Street, N. W.

Q. You mean a half block on one side of it?

A. I mean two-thirds, Mr. Urciolo.

Q. Two-thirds of a block on one side of the street, the only white houses west of First Street at all, that is what you call a neighborhood?

A. That is what I call my neighborhood.

Q. Thank you. Mrs. Giancola, have you ever seen any southern Mediterranean, say, Assyrians, Turks, Arabians, Sicilians, that looked as dark or darker than some colored people, so-called?

A. Mr. Urciolo, they may be dark, but there is something about them that brings out the fact that they are of white blood.

Q. And you can always tell, infallibly?

A. Yes, I would say I practically can.

Q. You say "practically?"

Mr. Gilligan: That is what she said!

The Witness: Yes, I am staying by that word "practically."

185 By Mr. Urciolo:

Q. In other words, there may be one time, say, in 500,000 that you might be mistaken?

A. Do I have to answer you that?

The Court: No, I think not. I think it is argumentative.

By Mr. Urciolo:

Q. Mrs. Giancola, do you recall testifying at the deposition-taking two weeks ago?

A. I do, Mr. Urciolo, I believe.

Q. At that time do you recall making this remark:

"Mrs. DeRita, be careful what you say because Mr. Urciolo is right behind you. He can understand what you say."

A. I did make that remark, Mr. Urciolo.

Q. What did you mean by that?

A. Well, we feel bitter towards you for coming in and breaking up our block. We were very peaceful and harmonious there and we feel that you bought that property just to transact it over to colored people and we don't like it, and naturally we feel bitter towards you and Mrs. DeRita is nervous and high-strung and I said that she better not say anything, that is what I meant.

Q. All you mean is that she better not say anything?

A. To you, is what I meant, Mr. Urciolo.

186 Q. The remark was "Be careful what you say because Mr. Urciolo can understand Italian."

Mr. Urciolo: I am going on good faith, Your Honor.

The Court: Ask her what was said.

By Mr. Urciolo:

Q. I think, though, your remark was this: "Be careful what you say, Mrs. DeRita. Mr. Urciolo is right behind you. He can understand Italian."

A. I did say that, Mr. Urciolo.

Q. Did you mean by that—

Mr. Gilligan: If Your Honor please, let it speak for itself.

The Witness: Mr. Urciolo—

The Court: Ask her what she meant.

The Witness: Mr. Urciolo, all I meant by that was not to make any statement against you, not in regard to this case. There is nothing we have to hide about this case, or lie about it. The facts are here.

By Mr. Urciolo:

Q. Do you have any resentment against the person who first sold the house on Bryant Street?

A. I have resentment against anyone that goes into ruin a block.

Q. Then it isn't solely directed against me?

A. Yes, I have resentment against you for selling
187 to those colored people.

Q. The question is, is it solely directed against me or is it shared also with the person or persons, who ever they were, who sold first to negroes on Bryant Street?

A. I feel against anybody who sold to them.

Mr. Urciolo: That is all.

Mr. Houston: I have a question I would like to develop, based on what she said. I want to wait for Mr. Gilligan.

The Court: No, go ahead.

Further Cross-examination.

By Mr. Houston:

Q. You stated that you objected to colored people?

A. Right.

Q. By that, you don't mean the color of the skin; take an American Indian, do you object to the American Indians?

A. The American Indians are considered red bloods.

Q. You don't object on the basis of color of skin, the fact that they are copper colored, you don't object to?

A. Mr. Houston, I object to when they say negro.

Q. When they say negro?

A. Yes.

Q. I am trying to develop the case of color. Do you know the East Indians, so-called Hindus, you have heard and seen Hindus, have you not, East Indians?

A. I have seen them in books and so forth and in
188 moving pictures.

Q. You have no objection to the East Indian because he has very dark brown skin?

A. The complexion of the person doesn't mean anything.

Q. The complexion does not?

A. It is a fact that he is a negro.

Q. I see, so no matter how brown a negro may be, no matter how white they are, you object to them?

A. I would say yes, Mr. Houston.

Q. No matter how white they are, or educated, or anything else, you object?

The Court: She has said yes.

Mr. Houston: I wanted to get—

The Court: She has answered the question.

The Witness: I wish to finish. I want to live with my own color people.

By Mr. Houston:

Q. Well—

Mr. Houston: It is not a question of foreigners, it is a question of trying to reach all the facts—

The Court: Ask another question.

Mr. Houston: That is all.

189 Further Cross-examination.

By Mr. Urciolo:

Q. Mrs. Giancola, you have no objection if I sold six houses or more to Japanese?

A. Yes, I do—

Mr. Gilligan: That is immaterial, and out of all line.

The Court: Wait a minute, the objection is sustained.

Mr. Urciolo: I think her statement was, Your Honor, that all she wanted was white people, and that her sole objection was to negroes.

By Mr. Urciolo:

Q. Is that correct?

A. I did say that, Mr. Urciolo.

Q. Then my question is,—

Mr. Gilligan: She is speaking from the covenant itself, if Your Honor please, and I think the objection is to negroes or colored there.

The Court: The objection has been sustained.

Mr. Houston: Let's get down to this matter.

The Court: What are we going to do, go back and forth between attorneys?

Mr. Houston: This is directed to the Court.

The covenant says "Negroes or colored persons." Now, I just wanted to get a clear definition. At the present time we have been trying it solely on the basis that it meant
190 negroes or persons of negro blood, and I wanted to make sure that that was the interpretation that we have before us, because it might simplify the rest of the examination.

Mr. Gilligan: I will be happy to answer that for counsel if he admits the fact that these are negroes.

The Court: Do you have any more questions?

Mr. Gilligan: No.

Mr. Houston: No.

The Court: You may step down.

(Witness stands aside.)

Mr. Gilligan: Call Mr. Giancola.

Whereupon—BALDUINO GIANCOLA was called as a witness by and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. Mr. Giancola, listen carefully and speak slowly and answer the questions.

Your full name?

A. Balduino Giancola.

Q. Where do you live?

A. 130 Bryant Street, N. W.

Q. Are you a citizen of the United States?

191 A. Yes.

Q. Were you born here?

A. No.

Q. When were you naturalized?

A. Oh, about eight or nine years ago.

Q. Do you have your naturalization papers with you?

A. My wife has it.

Mr. Gilligan: I am pursuing that because Mr. Houston insisted they should be brought.

(Naturalization papers passed to witness.)

By Mr. Gilligan:

Q. Look at it first and see if that is it.

A. That is it.

(Naturalization papers passed to counsel.)

Mr. Gilligan: I would like to have that introduced. You don't need to introduce that as an exhibit do you?

192 The Court: It may be received.

(Thereupon, said naturalization papers were marked as "Plaintiff's Exhibit No. 4", and received in evidence.)

Mr. Gilligan: It shows, if Your Honor, please, that he was admitted to citizenship on June 2nd, 1936. The Court may want to see that.

By Mr. Gilligan:

Q. What is your color, Mr. Giancola?

A. White.

193 Q. White,—you are one of the plaintiffs in both these cases that are consolidated here?

A. What?

Q. You are a plaintiff in both the cases that are before the Court?

A. Yes.

Q. Did you either read or did your wife explain to you what the papers were, the complaint that was signed?

A. My wife explained it to me.

Q. She went all over it with you?

A. Yes.

Q. About both papers?

A. Yes.

Q. And then you signed them?

A. That is right.

Q. And you want—all right, that is all.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Houston:

Q. What province were you born in, Mr. Giancola?

A. Italy.

Q. What province?

A. Compopasta.

Q. And came here when?

A. I think September the 8th.

194 The Court: What year?

The Witness: I think about '23, September 8, 1923.

By Mr. Houston:

Q. And how old are you now?

A. 41.

Q. Now, before you bought your house, did you go on Bryant Street, did you visit on Bryant Street before you bought your house?

A. No, I didn't.

Q. Did you make any inquiry as to whether there was any covenant or anything before you bought your house?

A. No.

Q. Did you make any inquiry as to whether there was a covenant before you went down to the title company to settle?

A. I know what is the covenant, when she went there, when my wife went there, then she explained to complaint, there was a covenant, not supposed to sell to colored.

Q. That is when she went to the title company, she came back and explained it to you?

A. That is right.

Q. When did you go on Bryant Street prior to the time you bought? Did you go on Bryant Street at all before you bought your house?

A. I think I went one time.

195 Q. Now, did you know that there was any negroes living in the same block before you bought your house?

A. Yes, I know all way down.

Q. Before you bought your house you knew that?

A. All way down, yes.

Q. Knew that before you bought?

A. Yes.

Q. Did you know that there were negroes right back of you on Adams Street before you bought?

A. Think I did.

Q. Have you had any trouble with any of the people who you say are negroes?

A. No.

Q. Do they keep their property up just about as well as other people in the neighborhood, so far as looks from outside are concerned?

A. Well, Mister, I can't tell.

Q. What is your business?

A. Builder.

Q. You are acquainted with buildings and how they appear, are you not?

A. Some they keep right good, some of them not.

Q. How about the whites?

A. Who?

Q. How about the white houses, the same way?

196 A. Certainly, I can't see if they keep them or not keep them.

Q. How many do you visit in the block?

A. Well, I don't visit much because I go to work in morning and come home in the evening.

Q. Do you visit the Marchegianis?

A. I think I have been there a few time-, yes.

Q. The DeRitas?

A. Yes.

Q. Anybody else?

A. Well, Mr. Hodge.

Q. How many times?

A. Oh, let's say about two, three, four times.

Q. Was that in connection with the case, these cases?

A. Yes, couple of times.

Q. Did you have any prejudice against negroes prior to the time you came to this country?

A. No, I didn't.

Mr. Houston: I have no further questions.

Mr. Urciolo: I have one or two questions.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Giancola, as a matter of fact, you never did visit the Hodges until this suit came up, did you?

A. I went in there before.

197 Q. Went in there before?

A. Before.

Q. When?

A. Let's say about a year ago.

Q. Well, you never visited them before a year ago?

A. Before what?

The Court: He didn't understand your question.

Mr. Urciolo: I asked if he had occasion to visit the Hodges before a year ago.

The Witness: Well, I can't recognize if I been or not. I know I been there before, but—

By Mr. Urciolo:

Q. About a year ago?

A. Yes.

Q. In other words, since the trouble with the colored people came along?

A. No, before that.

Q. Before that?

A. Yes.

Q. Then about three years ago?

A. Yes, something like that.

198 By Mr. Urciolo:

Q. Mr. Giancola, as a matter of fact, you signed this complaint to please Mrs. Hodge, did you not?

A. If I please Mrs. Hodge?

Q. To please Mrs. Hodge?

A. No, I didn't.

Q. Why did you sign it?

A. Because we got all together.

Q. Got all together?

A. That is right.

Q. You really want anyone, negroes, anyone that looks like a negro to stay out?

A. Well, that is what the government calls—

Q. What?

A. That is what the title company told me.

Q. That is what they told you at the title company?

A. That is right, not supposed to sell to colored.

Q. You now say that you were at the title company?

A. I mean my wife explained to me.

199 Q. Your wife explained to you?

A. Yes.

The Court: Don't repeat the answers.

Mr. Urciolo: I am sorry.

By Mr. Urciolo:

Q. And you can always tell who is a colored man and who is not?

A. I think I do.

Q. You think you do?

A. Yes.

Q. You don't know—

The Court: Do not repeat the answers, it runs the record up too much.

By Mr. Urciolo:

Q. You don't know for sure?

A. Sure I know.

Q. You know definitely?

A. Sure.

Q. You cannot make a mistake?

A. I don't think—no. I don't think I make mistake.

Mr. Gilligan: What can possibly be the object of this type of questioning? This man testified he is a plaintiff.

The Court: State your objection.

Mr. Gilligan: I say he has stated that he wanted
200 the covenant enforced and he can tell a negro now.

What else is there in following that type of questions? Is it responsive cross-examination to what has been asked him?

Mr. Urciolo: He states he is white and that certain people are colored. I think I have a right to know how he comes to that conclusion and the burden of proof is on them to prove that they are.

The Court. All right, ask him that.

By Mr. Urciolo:

Q. How do you know you are white?

A. I think United States got my papers for white man.

Q. You mean by white, by what it says on your citizenship papers?

A. That is right. My mother was white, my father was white.

Q. Your mother was white?

A. Right.

Q. And your father was white?

The Court: Do not repeat his answers.

Mr. Urciolo: Sorry.

The Court: It just doubles the record.

By Mr. Urciolo:

Q. But you don't know what your grandfather was?

A. I don't know my grandfather.

Q. So he may have been a very light Moor, let's
201 say, for all you know?

A. When I was born my grandfather died.

Q. That isn't the question. For all you know, your grandfather may have been a Moor?

The Court: Aren't you asking for what he knows, not what he might have been?

By Mr. Urciolo:

Q. Well, in other words, you don't know what your grandfather was?

A. No, I don't know my grandfather.

Mr. Urciolo: That is all, thank you.

(Witness stands aside.)

Mr. Gilligan: Call Mr. Hodge.

Whereupon, FREDERIC ELLIOT HODGE, was called as a witness by and on behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Gilligan:

Q. State your name, Mr. Hodge.

A. Frederick Elliot Hodge.

Q. Where do you live?

A. 136 Bryant Street, N. W.

Q. What is your business?

202 A. Clerk in the Department of Agriculture.

Q. And was it your wife who testified in this case?

A. Yes, sir.

Q. What is your color?

A. White.

Q. You and Mrs. Hodge own your house jointly?

A. We do.

Q. And are you a party to the two suits before the Court this morning?

A. I am.

Q. Were you familiar with the contents of the bill of complaint before you signed?

A. I was.

Q. And then you signed them?

A. I did.

Mr. Gilligan: That is all.

Cross examination

By Mr. Houston:

Q. Mr. Hodge, is your objection the objection of complexion of the skin as a basis of keeping persons out of the block, new persons out of the block, in the houses which are covenanted?

A. I object to people, persons, who are negroes, as it says in the covenant.

Q. So that regardless of how light the person is,
203 if he is a negro, or how dark he is, if he is a negro—
strike that.

Regardless as to how white a man may be, he is still a negro?

A. Still a negro.

Q. That goes down to one drop of negro blood?

A. Yes.

Q. On the other hand, if he is not a negro, no matter how dark he is, you have no objection?

The Court: He is referring to the covenant.

Mr. Houston: It says, "colored persons" here.

The Court: Yes, but he especially mentions what the covenant says.

Mr. Houston: I said I am talking about the covenant, colored persons under the covenant.

Mr. Gilligan: We also agreed, if Your Honor please, that in order to keep the cross-examination from going to too many extremes, that in these particular cases we were confining ourselves to the fact that the defendants named other than Mr. Urciolo and his wife, are negroes.

Mr. Houston: What did I say about Hurd?

Mr. Gilligan: I don't know what you said about Hurd.

Mr. Houston: You heard what I said about Hurd being an Indian.

204 By Mr. Houston:

Q. Let me ask this question: How about the American Indian, who has a copper color, is there any objection to them under the covenant?

A. We don't have any around here. We have no American Indians here in the city that live in our neighborhood.

The Court: A little while ago you asked for a limitation upon the questions, and it was stipulated that as to these two cases, the language of the covenant means persons of the negro race only.

Mr. Houston: That is right, but I also said before that I am bringing in the question of whether Hurd is an Indian or not, and I wanted to—

Is it agreed, then, if we establish the fact that Hurd is an Indian, that the covenant does not apply to that?

The Court: You have stipulated that as to these cases the covenant only relates to negroes.

Mr. Urciolo: If it was stipulated, it may have been stipulated with those two, as to the Hurd case; certainly not as to my case, as to the second case, because I take it the
205-207 covenant reads, "Negroes or colored persons."

The Court: Well, we had a stipulation a few minutes ago and apparently you agreed to it.

Mr. Urciolo: The stipulation suggested by Mr. Gilligan and then, as I recall, nothing else further was said about it.

Mr. Gilligan: It was agreed to by Mr. Houston.

Mr. Urciolo: Certainly I did not agree to it, as to the second case.

The Court: At any rate, you heard it announced that as to these two cases, it was only claimed that the covenant ran against negroes.

Mr. Urciolo: I must make my objection, take an exception, Your Honor, because—

The Court: That is all the plaintiffs claim.

Mr. Urciolo: But the covenant reads, the covenant, according to the complaint—

The Court: You sat here and entered into the stipulation.

Mr. Gilligan: I thought so.

Mr. Urciolo: I would be glad to have the record read.

The Court: Let's proceed.

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208-211 Cross-examination.

By Mr. Urciolo:

Q. Mr. Hodge, do you visit Mr. Luskey or Mr. Wrightsman?

A. I have been down to see Mr. Luskey once in a while. I see him sitting on the porch, if I happen to go that way, and inquire how he is getting along, —

The Court: Just a minute. You have answered.

By Mr. Urciolo:

Q. Now, as to Mr. Wrightsman —

A. (Interposing:) Now, Mrs. Hodge —

The Court: You answered the question.

By Mr. Urciolo:

Q. Therefore, Mr. Hodge, being the original owners on Bryant Street, you only have one person that you still visit?

A. Well, as I say, I see Mr. Luskey once in a while on the porch. I have no occasion to go into the house.

Mr. Urciolo: That is all.

• • • • • • •

217 Mr. Houston: If Your Honor please, we have here this morning Msgr. Cooper, of Catholic University. He has a class at Catholic University at 11 o'clock and we would like very much, if we could, to put in that part of our defense now, just Msgr. Cooper's testimony. He is an expert and we are offering him as an expert.

The Court: Do you have any objection?

Mr. Gilligan: An expert as to what?

Mr. Houston: As to color strains, negro bloods, characteristics, some of the Indian populations, the racial attributes of Assyrians, that is all elemental in here on the question of the effectiveness of the covenant, and the objective will be achieved.

218 Mr. Gilligan: I have to object if your Honor please, to that type of testimony. I think it is entirely out of point in connection with this case.

Mr. Houston: It is part of our defense, Your Honor.

The Court: The Court thinks it should be limited to the distinction between the white race and the negro race.

Mr. Houston: That may be true. Also, I mean to say—
All right, as that is the basic line.

Mr. Gilligan: Under those circumstances, if it is to be limited, I withdraw my objection.

The Court: Very well, then; you may call Msgr. Cooper.

Whereupon MONSEIGNEUR JOHN M. COOPER was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Will you please state your full name, Monseigneur?

A. John M. Cooper.

Q. And you are a professor—

A. Anthropology.

Q. Head of the Department of Anthropology at Catholic University?

A. I am.

Q. You are the author of several pamphlets, and
219 you are editor of the Review on Anthropology?

A. I am.

Q. You recently testified before the Congressional committee on questions of anthropology?

A. I did.

Mr. Houston: Is it conceded without further qualifying the witness—

Mr. Gilligan: He is qualified on anthropology, sure.

The Court: Very well.

By Mr. Urciolo:

Q. Dr. Cooper, assuming that you put together a group of 500 medium brown-skinned mulattoes, and another group of 500 persons of about the same shade, consisting of natives of India, Assyrians, Sicilians, Greeks, Portugese, Spaniards, Cubans, Puerto Ricans and Mexicans, would you be able to

distinguish infallibly which ones were negroids and which ones were caucasoids in each of these thousand cases?

A. No; in some cases, yes; but in a great many, no.

Q. North Africa is considered—What is North Africa considered, caucasoid, or negroid, dominantly?

A. Dominantly caucasoids, from the Sahara, north.

Q. How are Assyrians classified?

A. Caucasoid.

Q. Between 500 light-skinned Arabs in North Africa and 500 Norwegians, would you expect somewhat greater
220 negroid inheritance in either group, as compared with each other?

A. Slightly greater in the Arab of North Africa.

Q. And are the Arabs of North Africa considered negroid or caucasoid?

A. Dominantly caucasoid.

Q. Can you in all cases make certain that a given individual of very fair skin has no trace of negro ancestry?

A. Would you read that again, I want to get the question.

Q. I will rephrase the question, differently.

Could one make sure by any simple visible physical traits, such as fingernails, eyes, lips, nose, that a given light-skinned individual thought to be part negroid, is actually so?

A. None of these ordinary criteria are reliable. A highly frizzly hair is a very important criterion, but you get that occasionally even in caucasoids. One recent case has been reported in Norway of a family, typically blonde Nordics in which, however, there is a distinct kinky, grizzly hair. We do not know the cause of that. In most cases, highly kinky hair would be a very strong indication, but not absolutely infallible. These other criteria, such as the stripe in the fingernail, or coloring of the fingernail, are not reliable.

Mr. Urciolo: I have no further questions.

Cross-examination.

By Mr. Houston:

Q. Doctor, were you familiar with any of the
221 studies about negroes in the United States, passing over to the white group?

A. In a general way, but it is not my particular field.

Q. Is that a recognized social fact?

A. Oh, yes; definitely.

Q. And going on all the time?

A. Yes.

Q. Is the reason in part because there are no reliable tests for making the distinction between them?

A. That is true.

Q. Is another reason the fact that prejudice requires them to pass for white in order to obtain social, economic and political benefits denied them if identified as negroes?

A. I think so.

Q. And "caucasoid" does not mean pure white, but dominantly—or what?

A. I have used the term "caucasoid" here as, well, predominantly white, to cover the possibility that there may not be any absolutely pure races. A highly technical problem in genetics lies there. That is, as to whether the genes in the course of many generations, get lighter, or not. It is an un—it is undecided upon.

Q. It is also undecided whether there is any such thing as a pure white race?

A. Undecided.

222 Q. As a matter of fact it is largely a social concept varying from place to place and from time to time differing, as to the boundaries as to what is meant by the term "white"?

A. Social concepts enter very largely into the problem, but of course there is also the physical basis.

Mr. Houston: Thank you.

Cross-examination.

By Mr. Gilligan:

Q. This question you answered of Mr. Houston's, in regard to negroes passing over into whites,—

A. Yes.

Q. You simply mean by that that many times people that may have negro blood, pass as white?

A. Yes.

Q. That is all?

A. Yes.

Q. So that you can't always tell by looks?

A. Yes.

Q. Mr. Houston brought that out himself, because of prejudice, they have to pass as whites in order to—is that correct?

A. Yes.

Q. Is there any other test that might be used, outward tests, to determine whether a person is negro or white, except the kinky hair, perhaps?

223 Q. I don't know of any, with a very fair skinned negro and as you know in many cases of one-quarter or one-eighth negro blood, the skin is very, very fair. I could give you statistics, if you wish them.

Q. We also have a case along that line.

Mr. Gilligan: I don't think there are any other questions.

The Court: Thank you very much, Doctor.

The Witness: All right, sir.

Mr. Houston: May the witness be excused?

Mr. Gilligan: No objection.

The Court: Yes.

(Witness excused.)

Mr. Houston: As I understand it, it is conceded, as I take it, that the American Indian is non-negro?

Mr. Gilligan: I am not conceding anything.

Mr. Houston: May I put just one more question to the doctor?

Mr. Gilligan: If Mr. Houston is going to attempt by Dr. Cooper to prove that American Indians are not negroes, I object to it. I do not see that it has any bearing in this case.

Mr. Houston: I told you that I was going to establish the fact that Hurd was an Indian.

Mr. Gilligan: Despite the fact that he says he is of negro extraction?

224 Mr. Houston: I will have that explained to you, too.

The Court: You might put the question.

By Mr. Houston:

Q. Doctor Cooper, the American Indian: Is he considered to be of negro extraction, or not?

A. Not of negro extraction.

Mr. Houston: That is all.

Further Cross-examination.

By Mr. Gilligan:

Q. Doctor, I might ask this question: An American Indian who has part negro blood in him would be looked upon as a negro, would he not, with a quarter or an eighth negro blood?

A. That is a very hard question to answer, and I am not sure just how to answer it. I think it would be probably a matter of local opinion. For instance, there are a great many Indians in Oklahoma who have a great deal of negro blood, in varying proportions. It is a subject you don't bring up with them. You have the same prejudices there, and they are usually spoken of as Indians. There is a question of what word you are going to use to denominate them, and it is a rather hard question, too.

Q. Chances are, he would not be honest about it if he had negro blood?

A. You would not ask it. They would say "We are
225 Indians," and they would be considered in the locality as Indians.

Q. Even though they might be as much as half negro?

A. Yes, that might easily occur.

Mr. Gilligan: That is all.

Mr. Houston: Thank you very much, Dr. Cooper.

(Witness excused.)

Mr. Gilligan: If Your Honor please, inadvertently we did not have this map marked as an exhibit. I would like to have it marked as an exhibit for the plaintiffs, so that it would be a plaintiffs' exhibit.

Mr. Houston: That is No. 1?

Mr. Gilligan: No.

The Court: What is No. 1?

Mr. Gilligan: The civil action that Mr. Urciolo brought.

Mr. Houston: That is 5.

The Court: And you offer it now?

Mr. Gilligan: Yes, sir.

The Court: It may be received.

(The plat previously described and identified by counsel was marked "Plaintiffs' Exhibit No. 5" and by the Court received in evidence.)

Mr. Urciolo: Your Honor, I have here Dr. Parr, from George Washington University medical school, and I think it will be short, as I only have one question and I
 226 think we may as well dispose of that while we are on the subject.

Mr. Gilligan: It is entirely agreeable to me.
 The Court: All right.

Whereupon DR. LELAND W. PARR was called as a witness by and on behalf of the defendants and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. State your name, please.

A. My name is Parr, Dr. Leland W. Parr.

Q. You are professor of bacteriology at George Washington University?

A. Bacteriology, at the medical school, George Washington University.

Mr. Urciolo: Is that sufficient qualification?

Mr. Gilligan: Yes, indeed; go ahead.

By Mr. Urciolo:

Q. Dr. Parr, is there any test by which you can ascertain the race to which a group consisting of heterogeneous races, or nationalities belong to, by blood specimens, or otherwise?

A. I don't know of any. Different races vary with the—
 with respect to different characteristics, but particularly when you limit it to one man, two men, ten men,
 227 twenty men, I don't know of any such tests.

Q. By blood?

A. By blood. And I checked up on the matter. I don't know of any other tests that fall in the field of medicine, chemical or embryological occurrence of disease, or anything of that sort.

Mr. Urciolo: Thank you, that is all.

Mr. Gilligan: No questions.

Cross-examination.

By Mr. Houston:

Q. Just a moment, on pigmentation, Doctor. The pigmentation is a matter of—

Mr. Gilligan: Why don't you ask him what it is? Let him answer.

By Mr. Houston:

Q. Doctor, would you explain pigmentation?

A. Well, I can't explain that because I am a bacteriologist. While I am not a physiologist, I will say that we have white negroes, and where we have dark persons without negro blood, pigmentation is an adaptation—I said I could not explain it; I can't, but a protective adaptation—

The Court: Unless you can qualify as an expert of that.

The Witness: Excuse me, sir; that is not my field.

Mr. Houston: That is all.

228 The Court: Thank you, very much, Doctor. You may be excused, I take it?

Mr. Urciolo: Yes, sir.

Mr. Gilligan: Yes.

Mr. Houston: Thank you, Doctor.

Mr. Gilligan: Call Mr. Marchegiani.

Whereupon CONSTANTINO MARCHEGIANI resumed the stand and testified further as follows:

(Direct examination (resumed)).

By Mr. Gilligan:

Q. State your full name, Mr. Marchegiani.

A. Constantino Marchegiani.

Q. Where do you live?

A. On University Park, Colesville Road, 6415 Colesville—

Q. Louder, so we can all hear.

A. University Park, 6415 Colesville Road.

Mr. Houston: 6415 what road?

The Witness: Colesville.

Mr. Houston: C-o-l-e-s-v-i-l-l-e?

The Witness: Yes.

229 By Mr. Gilligan:

Q. Did you ever live on Bryant Street?

A. Why certainly, I lived over there fifteen years.

Q. And at what address?

A. 124.

Q. And when did you move from Bryant Street?

A. On June, I believe, the 5th I believe it was. I don't remember exactly.

Q. What year?

A. Of '45.

Q. Did you sign the two complaints that were filed in this case, one against Mr. Hurd and the other—

A. I certainly did.

Q. And did you know what they contained?

A. Certainly.

Q. What is your color?

A. Well, I expect it to be white.

Q. Expect it to be white?

A. Certainly.

Q. Do you have any negro blood in you?

A. As far as that, I never seen a colored man that I came over here in this country, so I don't know about it.

Q. Never saw a colored man?

A. That is right.

Q. Where do you come from?

230 A. Where I come from?

Q. Where?

A. Italy.

Q. And saw no negroes in Italy?

A. No.

Q. You are a naturalized citizen?

A. Certainly.

Q. And when were you naturalized?

A. 1930.

Q. 1930—do you have your naturalization papers?

A. Yes, sir. (Naturalization certificate passed to counsel.)

Mr. Gilligan: Do you want to look at it?

(Naturalization certificate passed to counsel for defendants.)

Mr. Gilligan: May that be marked Plaintiffs' Exhibit No. 6—or is it 7?

The Clerk: Six.

(Document previously identified as naturalization certificate was marked "Plaintiffs' Exhibit No. 6.")

Mr. Gilligan: Mr. Marchegiani, I think that is all I want to ask.

Cross-examination.

By Mr. Houston:

Q. How old are you, Mr. Marchegiani—just a moment; it will be on that.

Mr. Houston: Let me see that (examining Plaintiff's Exhibit-No. 6).

By Mr. Houston:

Q. You were twenty-seven in 1930; you are forty-two now?

A. That is right.

Q. Born in what province?

A. Northeast of Rome, that is Province of Pescara.

Mr. Gilligan: Would you mind letting me ask a question that I should have before?

What is your business?

The Witness: I work for Capital Transit, mechanic.

The Court: Capital Transit?

Mr. Houston: As a mechanic?

The Witness: Yes.

Mr. Houston: Do you and your wife still own 124 Bryant Street, Northwest?

The Witness: Yes.

Mr. Gilligan: How is it occupied, if at all?

The Witness: By white people.

Mr. Gilligan: White?

The Witness: Yes.

Mr. Gilligan: And they have been put in since you have moved away?

The Witness: Yes.

By Mr. Houston:

Q. Who are the tenants?

A. Tenants?

Q. Yes; who are they?

A. I don't know their names.

Q. All right. Who rented it; who is your agent?

A. G. H. Lallagher.

Q. How do you spell it?

Mr. Gilligan: May I spell it?

By Mr. Houston:

Q. Show how you spell it; I will let you write it.

A. I can write but I can't spell it.

Q. You write it (passing blank paper to witness who wrote thereon "L-a-l-l-a-g-h-e-r").

Mr. Houston: I would like to have this marked as Defendants' Exhibit No. 1.

(The paper writing of the witness Marchegiani was marked "Defendants' Exhibit No. 1, Marchegiani," and by the Court received in evidence.)

By Mr. Houston:

Q. Where is his office?

A. 1510 I believe.

Q. Where?

A. 1510 H Street; No. 1410 H Street.

233 Q. He is in the real estate business?

A. That is right.

Q. This is a matter of identification. I am trying to—

A. (Interposing.) Yes, that is right.

Q. Now, at the time that you moved into your house, 124 Bryant Street, did you have gas or electricity?

A. I had both.

Q. You mean you had gas for heating purposes, too?

A. No, I had for cooking.

Q. What kind of heat did you have?

A. Please explain.

Q. What kind of heat did you have?

A. It was hot air.

Q. Old furnace or new?

A. Well, it was old.

Q. And how many rooms in the house?

A. Let's see,—seven.

Q. A row house?

A. Yes.

Q. Now, that house you are living in now, is it a new house or an old house?

A. Oh, it is practically a new house.

Q. Is it detached or row?

A. Detached.

Q. What kind of heat does it have?

234 A. Heat?

Q. Yes.

A. Hot water—oil.

Q. Hot water and oil?

A. Yes.

Q. Now, this hot air, is that coal or what?

A. Coal.

Q. How much yard do you have? How large is your lot out there?

A. Where I am now?

Q. Yes.

Mr. Gilligan: What difference does it make, if Your Honor please, what his lot is where he is now?

The Witness: I can't understand.

Mr. Houston: All right. I want to find out just exactly why he moved and whether he wants to come back, what his interest is in moving, and in having the covenant enforced. I think that is all material.

The Court: The objection is sustained.

Mr. Houston: All right. Let me then make the tender that it is our position to explain to the Court—it is our position that it is part of the defense, I mean part that has been opened on cross examination, that the comparison of the two houses for any purpose is material to the case, on appreciation, or anything else, and that on the matter

235 of enforcement of the covenant again; in other words, my basic position is this—one of my basic positions, I should say—is this: that a court of equity will not enforce a covenant for spite, that it will enforce a covenant only by the special remedy of injunction when the benefit to the plaintiff outweighs the hardships to the defendant, and that in this situation—certainly so far as this

plaintiff is concerned—he is not able to show any detriment and that therefore when we go on and put in our own case, that then we will be able to show him and say on the balance of equity, the equities are greater on our side and for that reason ask the Court to refrain from issuing an injunction.

May I ask again for Your Honor's ruling?

The Court: The objection is sustained.

By Mr. Houston:

Q. Now, Mr. Marchegiani, during the time that you were living in 124 Bryant Street, did you have any difficulty with the negroes living in the square?

A. No, sir.

Q. And you did not have a prejudice against negroes before you came to this country, did you?

A. I don't know it, because I never seen one.

Q. The answer then is no.

A. Yes.

Q. Now, Mr. Marchegiani, how do you know you are white?

236 A. Well, how do I know I am white? I never seen one colored over where I come from.

Q. You have seen plenty of dark Italians, haven't you?

A. No.

Q. What?

A. Not where I come from, not.

Q. Don't the Italian people move about from place to place? They don't stay in one place all the time?

A. Oh, yes, they stay on the place where they belong to.

Q. You mean to say that a man in Naples never goes up and settles north of Rome in Pescara?

A. No.

Q. Never does?

A. If goes on business, but goes back same place where he stays.

Q. Never moves up there?

A. Unless like going to work over there, something like that; but still going back to his own place.

Q. Why did you leave, if Italians never leave?

A. I was anxious to go see other countries.

Q. What?

A. Anxious to go see some other country.

Q. Do you think other Italians might be anxious to see some other countries, see and settle some place else?

A. That is not my business.

237 Q. How many of your ancestors have you actually seen?

A. Three of them.

Q. And they are who?

A. My father, grandfather and great-grandfather.

Q. What side?

A. Both sides.

Q. How many grandfathers, great-grandfathers, did you have?

A. One.

Q. You mean you only had one great-grandfather?

A. What I saw.

Q. You don't know the color of the others?

A. Well, I saw what I saw was white, outside that I couldn't answer.

Q. You don't know?

A. That is right.

Q. All right.

Mr. Houston: I have no further questions. I shall recall this witness later as a matter of defense.

Mr. Gilligan: I would like to ask one question in view of the questions asked by Mr. Houston.

Have you finished?

The Court: In view of what—

Mr. Gilligan: If your Honor please, what I am—

238 The Court (continuing): —what was said yesterday, I wanted to indicate that you must complete your cross examination now.

Mr. Houston: Your Honor, you have just told me—I am not calling him for cross.

The Court: You may call him as your own witness.

Mr. Houston: That is all, Your Honor.

The Court: That is not a recall.

Mr. Houston: I see.

Let me explain my point. As I understand it, Mr. Marchegiani, Mr. Giancola and Mr. DeRita are contractors. So far as I am concerned, I am trying to accommodate them so they can be relieved and not have to continue sitting here and I am willing to tell Mr. Gilligan when it will be necessary to bring them back. It is a question of not needing—

The Court (Interposing): The Court will require them to stay here if you indicate that you are going to call them.

Mr. Houston: I don't want them to have to stay—

The Court: The Court will require them to stay.

Mr. Gilligan: After they finished this morning, they can be excused for the rest of the day, can they not?

Cross-examination.

By Mr. Urciolo:

Q. Mr. Marchegiani, from what town did you come from?

A. Alicia.

Q. How many people in that town?

239 A. Well, I don't know.

Mr. Gilligan: If Your Honor please, I hate to keep objecting; but they keep piling up and piling up irrelevant evidence.

The Court: Sustained.

Mr. Urciolo: The reason for asking that question, Your Honor, is that he stated that he was from northeast of Rome, in Pascara, and then he stated that he had never seen a negro. Now, consequently, if he comes from a town of about 200 persons, the chances are that he never has seen a negro—

The Court: The objection is sustained.

By Mr. Urciolo:

Q. Mr. Marchegiani, how much rent do you get for your house?

A. \$95.

Q. Is that approved by the Rent Control?

A. Well, I could not tell you about that; that is the agency have taken care of it.

Q. You don't know?

The Court: He said he didn't know.

The Witness: I told you—don't know.

Mr. Urciolo: Sorry; I thought he said the agent.

By Mr. Urciolo:

Q. How much did you pay for your house?

Mr. Gilligan: What house?

240 Mr. Urciolo: The house on Bryant Street.

The Witness: \$4.950.

By Mr. Urciolo:

Q. How much?

A. \$4,950.

Q. \$4,950?

A. That is right.

The Court: Don't repeat his answers.

Mr. Urciolo: I can't understand him.

Mr. Gilligan: Come closer.

The Witness: Come closer, you can hear me.

By Mr. Urciolo:

Q. How much would you take for your house today?

A. Well, I take—it is hard to say—I didn't figure it up yet.

Q. Would you take \$10,000?

A. Might be so, might be not.

Q. Then, Mr. Marchegiani, why do you state in your complaint when you say you read it and understand it, that the "presence of negroes will highly depreciate" your property?

A. I am the only defendant—the covenant of the property?

Mr. Houston: I didn't understand that.

Mr. Urciolo: The answer is not responsive, Your Honor.

The Court: Read the question again.

241 (Record read by the reporter.)

Mr. Houston: May I understand the answer; may I hear the answer?

The Court: What?

Mr. Houston: I did not hear the answer, before the question.

The Court: Read the question and the answer again.

(Record read by the reporter.)

By Mr. Urciolo:

Q. In other words, then, in your complaint, when you stated that the presence of negroes would be highly depreciative of your property and would be ruinous of the price, you did not mean that?

A. I couldn't answer about that.

Q. Well, you know whether you did or not.

A. I didn't understand you correctly the way you put that words.

Q. In the complaint—

A. Yes.

Q. —for an injunction to make the negroes move—

A. That is right.

Q. The so-called negroes move—you stated that because negroes had moved in the block, their presence had depreciated and lowered the price of your property, and it would be ruinous of your property interests. What did you mean by that?

242 Mr. Gilligan: I object because that is not what he said at all, moving into a block—

Mr. Urciolo: Let's read it.

Mr. Gilligan: If you say what you mean. He said "into the block."

By Mr. Urciolo:

Q. I am reading from paragraph 10 of the allegation—have you read this?

A. Yes, I read it.

Q. Did understand it?

A. What I could understand—what I couldn't understand, my wife explained to me.

Q. "Plaintiffs aver that the above-mentioned and described deeds of Lots 113, 114, 136, Square 3125 to the respective negro defendants are a nullity and of no effect and said deeds and conveyances confer no property rights upon said defendants; that the contemplated occupancy of such property by negro defendants as well as to permit the deeds and conveyances to remain a matter of record would be injurious, depreciative and absolutely ruinous of the real estate owned by the plaintiff."

Now, what did you mean by that, Mr. Marchegiani?

A. Yes.

Mr. Urciolo: Your Honor, again we ask for an interpreter.

The Court: Can you explain what it means?

243 The Witness: Still I could not explain myself the way he read it.

Mr. Urciolo: I am only reading what you signed (addressing the witness).

Mr. Houston: Let him read it.

By Mr. Urciolo:

Q. Do you want to read it (passing copy of complaint to the witness):

Paragraph 10, from here to here (indicating).

A. That is for depreciation, yes.

Q. What did you mean by it? Did you mean—

Mr. Houston: Just ask him.

Mr. Gilligan: He said he meant depreciation.

The Witness: I did answer, it is for depreciation.

By Mr. Urciolo:

Q. Explain yourself.

A. The property depreciation, just as that paper meant.

Q. In other words, your property because of the presence of negroes, is now worth less than if it were completely white?

A. It would.

Q. It would?

A. That is right.

Q. Then why, Mr. Marchegiani, may I ask you, when I asked you if you would take \$10,000 for the property, I am taking it for granted you recall you said you paid 244 \$4,950, and you said you don't know whether you would sell or not?

A. Well, it is—I paid \$4,950, but it cost me double for remodelling.

Q. Then it cost you, say, \$10,000 to remodel.

A. Cost about that much more than that I paid to remodel it.

Q. Again I ask you then, would you take \$12,000 for your property?

The Witness: Do I have to answer that question, Your Honor?

The Court: Not unless you want to say that you would.

By Mr. Urciolo:

Q. Answer it yes or no.

A. No.

Q. You would not take \$12,000?

A. I don't say whether I take it or not.

Q. In other words, you refuse to answer?

A. That is right.

The Court: He does not have to fix a value on it now, that he would sell it for.

Mr. Gilligan: There are so many angles to it, if Your Honor please. The question is whether the negroes are going to stay, whether they are out, all this enters into that type of question.

Mr. Urciolo: My questioning is directed to paragraph 10 of the allegation, that it is ruinous. I will ask him to please explain in what manner it is ruinous.

By Mr. Urciolo:

Q. In what manner is it ruinous, Mr. Marchegiani?

The Court: He just answered that—on account of the depreciation of the property.

By Mr. Urciolo:

Q. Then, he was asked in what way does it depreciate it.

A. Which way is depreciate it?

Q. Yes.

A. In every way.

Q. Well, which way?

Mr. Gilligan: He said "In every way".

Mr. Houston: Yes, he means to say we are entitled to probe it, if Your Honor please.

The Court: Wait a minute.

By Mr. Urciolo:

Q. What do you mean "In every way"? Give us two ways, five ways.

A. Suppose, you know, you sell, I say about six house to colored, is that correct? and I want to sell my house afterward, how much would I get for it?

Mr. Gilligan: That is his answer.

The Witness: That is the question.

By Mr. Urciolo:

Q. Well, the question is would you get more or less?

246 A. I would get less.

Q. You would get less?

A. That is right.

Q. Have you tried?

A. I don't have to try.

Q. What makes you think you would get less?

A. I know.

Q. How do you know it? Have you inquired as to what the negroes have paid for the house? How do you come to your conclusion?

A. I seen a different case.

Q. For example?

A. On a different place that, after the colored move in, that the property depreciated.

Q. Which case? Give me one case.

A. I can't recall all the case.

Q. In fact, you don't know of any case.

A. Well, might be not, but that is my answer.

Q. Mr. Marchegiani, would you object to Ethiopians moving into the block?

A. On the deeds which I recall it last night, said "Negro or colored", which I believe.

Q. You are not answering the question.

Mr. Gilligan: Wait a minute. He is answering.

247 The Witness: Which I believe is all the race outside white.

By Mr. Urciolo:

Q. Is that your interpretation?

A. That is right.

Q. May I read the covenant to you?

A. Go ahead and read it.

Q. Suppose I let you read it.

A. You read it out loud.

Q. "Subject also to the covenant that said lot shall never be rented——"

Excuse me, Your Honor.

By Mr. Urciolo:

Q. You said you read it last night?

The Court: Go ahead and read it.

Mr. Houston: Your Honor, may I offer an objection to forcing the counsel to read that, in view of the fact that this witness, he had first requested the witness to read it himself?

The Court: What is your objection?

Mr. Houston: My objection.

The Court: Yes.

Mr. Houston: My objection is the question of proving—

The Court: This counsel has the witness now.

Mr. Houston: I have the right to take advantage of anything brought out in the trial, so far as my defend-
248 ants are concerned, so that I am saying that the line of examination that he has followed shows that he didn't have the slightest conception whatsoever of what he was doing and therefore I would like to insist—

The Court: The objection is overruled.

Mr. Houston: I take an exception to Your Honor's forcing counsel to read.

The Court: I understand that.

Mr. Urciolo (Continuing): "Subject also to covenant that said lot shall never be rented, leased, sold, transferred or conveyed unto any negro or colored person under a penalty of \$2,000 which shall be a lien against said property."

By Mr. Urciolo:

Q. In view of what I read, do you modify your answer, Mr. Marchegiani?

A. That said "negro or colored race" persons.

Q. Please answer the question, Mr. Marchegiani.

A. I said negroes, colored persons.

Q. I think that calls for a yes or no answer. You can explain or expatiate thereafter.

A. Colored person mean—

Mr. Urciolo: Your Honor, this witness is not responsive.

The Court: What is your question?

Mr. Urciolo: My question was—having heard this
249 covenant read to you, do you modify your previous answer.

The Witness: I didn't understand you yet.

Mr. Urciolo: I am sorry, your Honor; there is no way I can make him understand.

The Court: I can't understand, either.

Mr. Urciolo: This very man, Your Honor, explained a few minutes ago that he understood the covenant to mean that no one could occupy the premises except white people.

The Witness: That is right.

Mr. Urciolo: Then, I read the covenant to him and asked him did he modify his answer, would he now modify his answer in view of having read the covenant to him.

Mr. Gilligan: You used the word "change" instead of "modify".

The Court: Do you change your answer or not?

By Mr. Urciolo:

Q. Do you change your answer now?

The Witness: I cannot understand yet.

Mr. Urciolo: I protest, Your Honor. We cannot proceed in this fashion without an interpreter. There will be others, in a worse situation.

The Court: He doesn't need an interpreter. Ask him again what he thinks the covenant means.

By Mr. Urciolo:

Q. What does this covenant mean, Mr. Marchegiani?

250 A. That mean strictly whites.

Mr. Gilligan: Isn't that a responsive answer?

Mr. Urciolo: Yes, Your Honor.

The Court: Well, what is the next question?

Mr. Urciolo: I have no next question, Your Honor. My point at this stage of the game is that if that is what he means by it, he doesn't understand the English language and therefore—

The Court: That is for argument later.

Mr. Urciolo: Now, at this time, Your Honor, if I may, I would like to make a motion that his name be stricken as a plaintiff because by his answers I think I have definitely established that he does not understand what he has signed.

The Court: The objection is overruled and the motion is denied.

Mr. Urciolo: No further questions.

Mr. Gilligan: That is all.

Mr. Houston: If Your Honor please, there are two points that were brought out, new points, in the cross examination. The Court: You may question.

Further cross-examination.

By Mr. Houston:

Q. Mr. Marchegiani, have you dealt in real estate very much?

A. What the ones that hold the house now.

251 Q. No, have you bought and sold very many houses?

A. No.

Q. How many houses have you bought and sold?

A. Just bought two of them and that is all. I ain't sold none.

Q. Bought that one at 124 which you now own?

A. That is right.

Q. Then bought the one you now live in?

A. That is right.

Q. You don't set yourself up as a real estate expert, do you?

A. No, I won't say not.

Q. The second question: You testified on cross-examination that you read the deed last night and the covenant.

A. I went over last night again 'cause I knew what was in it but to make sure of it, them two words, that I went over again.

Q. All right. Now, tell me, when did you first know about the covenant?

A. When I first bought it.

Q. Now, did you conduct the negotiations or did Mrs. Marchegiani conduct the negotiations?

A. Well, she conducted most of them.

Q. Did you go on to the property and look at the house before you bought it, or did she?

252 A. I went with her.

Q. Now, at that time, did you know of negroes living in Bryant Street at 154, down to Second?

A. Well, not right at present, but then somebody that told me that they were.

Q. You didn't know that at the time you first went to look at the house, is that correct?

A. That is right.

Q. When did you first learn or when did you first know that negroes lived in Bryant Street from 154 down to Second Street, was it before you bought your house or afterwards?

A. Before.

Q. Before you bought your house?

A. That is right.

Q. Then you bought your house knowing that out of, say, 30-some properties in the square, 11 were already occupied by negroes?

A. That is right.

Q. Did you make any inquiry to find out whether the negroes owned their houses or were just renting?

A. Yes.

Q. What did you find out?

A. Owning.

Q. Found out that they were owning?

253 A. That is right.

Q. Now, when did you first find out about the covenant on your house?

A. That was about the same time because I was looking around, because it was colored all over it, and I see that there wasn't in there.

Q. Right back of your house at the time you bought were colored people living back of your house that you bought?

A. Yes.

Q. Now, Mr. Marchegiani, who told you about the covenant? Did you find out first at the title company?

A. I find out from a young fellow over next door, the way it was situated, and then I went to the title.

Q. Who was the young fellow next door?

A. Morris Lanigan.

Q. Can you just say that again?

Mr. Gilligan: Morris Lanigan.

By Mr. Houston:

Q. Morris Lanigan?

A. Yes.

Q. When did he tell you?

A. He told me that from 154 down, it was occupied by negroes and can't come any further than that, that where they come, the way it is writ.

254 Q. And he told you that before you bought your property?

A. That is right.

Q. And you bought with full knowledge?

A. That is right.

Mr. Houston: I have no further questions.

Mr. Gilligan: That is all.

Mr. Houston: That is all.

Mr. Gilligan: The Court wants you to stay. May he be excused until one-thirty?

Mr. Houston: My thought is, Your Honor, I will be perfectly willing, I want to accommodate these people, and I am perfectly willing to put my own persons on the stand first, after you close your case and I think, frankly, we will go on all day on this.

Mr. Gilligan: We won't be—

The Court: He may be excused until one-thirty.

Mr. Gilligan: You may be excused until one-thirty.

Mr. Marchegiani: No use in that.

(Witness steps down.)

Mr. Gilligan: Call Mrs. Marchegiani.

Whereupon MARY M. MARCHEGIANI was called as a witness by and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

255 Direct examination.

By Mr. Gilligan:

Q. State your full name, Mrs. Marchegiani.

A. Mary Marchegiani.

Q. You heard your husband testify as to living in Maryland?

A. I did.

Q. And owning 124 Bryant Street?

A. Right.

Q. And you still own it?

A. Yes.

Q. And what rent do you get for it?

A. \$95.

Q. And has the matter been taken up with the Rent Control Board?

A. On file with the Rent Control Board by Mr. Lallagher.

Yes.

Q. You are a party plaintiff in this case, are you not?

A. Yes.

Q. You signed both complaints?

A. I did.

Q. At the time you bought the house, did you make any investigation regarding whether or not colored people or negroes could occupy houses in there?

256 A. We did. We had quite a while to decide it in because the house was empty and we went to see it three or four times before we decided to buy it and one of those times we were out in the back yard and Morris Lani-gan was in the back yard and we inquired through him how the situation was and he told us that they couldn't come up any further, just the last ten houses were the only ones that were occupied, that they couldn't go up any further.

Q. Couldn't come any closer to you?

A. Couldn't come any closer, and when we went to the title office they told us the same thing and also the man we bought it from.

Q. Did that have any bearing on your reason for buying?

A. Yes, that was my reason.

Mr. Gilligan: I think that is all.

Cross-examination.

By Mr. Houston:

Q. Now, Mrs. Marchegiani, at the time you moved in there were negroes in 154 down to Second Street?

A: There were.

Q. And negroes directly back of you?

A. Mixed.

Q. Now, in 1930 on Adams Street, back of you, were negroes all down that square?

257 A. Well, I am not sure, but I think there were still some white families, but I didn't inquire. After we moved in, I found out that there was still some white families.

Q. Did you inquire at all as to whether the covenant covered any houses other than the houses on Bryant Street?

A. Well, I was not interested in any other place.

Q. Not interested in any house except on Bryant Street?

A. Where I was moving to.

Q. And this \$95 per month, how many rooms in your house?

A. Seven rooms—two apartments.

Q. Two apartments?

A. Yes.

Q. Two complete apartments?

A. Well, a sink and stove, upstairs.

Q. Sink and stove?

A. And only one entrance.

Q. Wait a minute, stove upstairs, and how many baths?

A. One.

Q. Now, have you had just one tenant in there since you rented the place?

A. Yes.

Q. That tenant didn't object to moving in on account of the fact that negroes were there, did he?

258 A. At the time I rented it, there was only one family, 116, already in.

Q. All right, did that tenant object to moving?

A. I never met the tenant.

Q. So far, he has never objected,—to you?

A. I never spoke to him at all.

Q. Did anybody ever report to you that he objected?

A. I told Mr. Lallagher to explain the situation on the block.

Q. I said, did anybody ever report to you that the tenant objected to the presence of negroes?

A. No.

Q. Has the tenant ever since reported to you, have you had any report from the tenant since that time?

A. I have not—

Q. Just a moment, have you had any report from the tenant since that time as to objection because more negroes were moving in?

A. No.

Mr. Houston: That is all.

Mr. Urciolo: No questions.

Mr. Gilligan: That is all, Mrs. Marchegiani, thank you.

(Witness steps down.)

Mr. Gilligan: Call Mrs. DeRita.

If Your Honor please, Mr. Houston just asked
259 about Mrs. Marchegiani's place of birth. I will
be happy to establish that.

Mrs. Marchegiani, are you native-born?

Mrs. Marchegiani: That is, naturalized.

Mr. Gilligan: Do you have your naturalization papers?

Mr. Marchegiani: Yes.

Mr. Gilligan: When were you naturalized?

The Court: Ask Mrs. DeRita to step down.

Come back, Mrs. Marchegiani.

Whereupon, MARY M. MARCHEGIANI resumed the stand
and testified further as follows:

Redirect examination.

By Mr. Gilligan:

Q. When were you naturalized?

A. I don't remember exactly, but I think it was in 1939.

Q. 1939?

A. Not positive.

Q. When did you first come to the United States?

A. About 33 years ago.

Q. 33 years ago?

A. Yes, I was very small.

Q. Do you remember where you came from?

A. No, I don't. I was only about five or six years
260 old.

Q. You came from Italy, I presume?

A. I presume so.

Q. Otherwise, you don't know?

A. Yes—don't know.

Q. What color are you?

A. White.

Recross examination.

By Mr. Houston:

Q. Where were you born, Mrs. Marchegiani?

A. Italy.

Q. Italy,—what province?

A. I am not positive, Deramo.

Q. And how many of your ancestors have you seen?

A. Just my mother and father, the rest died when I was very small.

Mr. Houston: I have no further questions. Are you going to introduce that (referring to naturalization certificate)?

Mr. Gilligan: I would like to have this as Plaintiff's Exhibit No. 6.

(Said Naturalization Certificate of Mary M. Marchegiani was marked "Plaintiffs' Exhibit No. 6," and received in evidence.)

261 Recross-examination.

By Mr. Urciolo:

Q. Mrs. Marchegiani, you heard Mr. Marchegiani testify that you explained to him—

A. I did.

Q. —the meaning of this covenant?

A. I think if you had explained depreciation, he would have understood it.

Q. Reducing in value of the house so that it won't pay so much.

A. You didn't say that, you were told yesterday that they couldn't understand good English.

Q. I asked that he get an interpreter.

The Court: Answer the question.

The Witness: With plainer language he would have understood you.

By Mr. Urciolo:

Q. Mrs. Marchegiani, is the explanation that Mr. Marchegiani gave of this covenant the one that you gave him?

A. The explanation of the covenant is that we—

Q. Answer the question, please. The question is, Is the explanation that he gave the one that you gave him?

A. No, that is his own explanation.

Q. In other words, he didn't understand you?

A. He understood when I told him.

262 Mr. Urciolo: No further questions.

Mr. Gilligan: That is all.

The Court: You may step down.

(Witness stands aside.)

Whereupon, VICTORIA DeRITA was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. Mrs. DeRita, state to the Court here, don't get excited—

Mr. Urciolo: Excuse me, Your Honor. Before we start, I move at this point that the name of Mr. Marchegiani be stricken as a plaintiff.

He did not understand this complaint.

The Court: The motion is overruled.

By Mr. Gilligan:

Q. Will you state your name?

A. Victoria DeRita.

Q. And where do you live?

A. 128 Bryant Street, N. W.

Q. And do you and your husband own the house together?

A. Yes, sir.

263 Q. When did you buy that house?

A. 1940.

Q. 1940.

A. That is right.

Q. Have you lived there ever since?

A. Yes, sir.

Q. Are you a naturalized citizen?

A. Applicant, just waiting for my citizen paper any day.

Q. Applicant now?

A. Yes.

Q. Born in Italy?

A. Yes, sir.

Q. When did you come to the United States?

A. 1935.

Q. 1935?

A. Yes, sir.

Q. What is your color?

A. White.

Q. Are you sure of that?

A. Yes, indeed.

Q. Did you sign the two bills of complaint which we filed in these cases?

A. Yes.

264 Q. Did you know what they contained?

A. Yes.

Q. How did you know?

A. Because Mrs. Hodge and Mrs. Giancola told me.

Q. Explained them to you?

A. Yes.

Q. When you were getting ready to buy your house did you make any inquiry as to whether there was any covenant as to negroes?

A. Yes.

Q. Just tell the Court what your inquiry was, what did you do?

A. Yes.

Q. I say, What inquiry did you make—through what?

A. Mrs. Giancola.

Mr. Houston: Who?

The Witness: Mrs. Giancola, she explained to me what I have to do myself.

By Mr. Gilligan:

Q. Did she explain to you about the deed covenant?

A. Yes.

Q. Did you know that there were any negroes living in the block at the time you bought?

A. Well, the negro lives in 154 all way down, 152 all way up, all way white.

Mr. Gilligan: I think that is all, if Your Honor please.

265 Cross-examination.

By Mr. Houston:

Q. Mrs. DeRita, do you read and write English?

A. Nope.

Q. How many times did you sign papers?

A. Two time.

Q. Where were you the first time?

A. Well, I can't remember the date.

Q. No, what time, night or day time, was it?

A. Night time.

Q. Where were you and who was present?

A. Mrs. Hodge.

Q. Who else?

A. Mr. Gilligan.

Q. Who else?

A. All the rest that come in this Court, Mrs. Marchegiani, Mr. Marchegiani, Mr. Giancola, Mrs. Giancola, Mrs.——

Q. And the second time?

A. Second time, Mrs. Hodge come to my house.

Q. Now, did she read the paper to you?

A. She explain it to me, yes.

Q. Do you remember testifying on the deposition?

A. Sure.

Q. Remember testifying over at Mr. Middlemiss' office?

266 A. Yes.

Q. Well, now, I will read this to you, see if you remember it.

Mr. Gilligan: Read it slowly so she can get it.

Mr. Houston: Sure. Ready, Mr. Gilligan?

Mr. Gilligan: Yes.

By Mr. Houston:

Q. I start back, Mrs. DeRita, a little bit so that you may familiarize yourself with the thing, in other words, I will start a little bit further back, understand?

A. Yes.

Q. I asked you this question? (Reading)

"Will you take a pencil and write your name now on this piece of paper?"

And you said, "Sure."

And I said, "I ask that this be marked as 'De Rita Exhibit No. 3'."

And I said, "And you say—" and you interrupted me, you said, "Well, I signed one paper."

A. I signed two papers, not one.

Mr. Gilligan: He is reading.

By Mr. Houston:

Q. (Continuing):—"Well, I signed one paper. I do not know whether I signed this one or that one, but I signed a paper."

267. "Question: Where did you sign that paper?"

And you asked me, "What do you mean?" Then, I asked you, "Where were you when you signed that paper—whose house?"

And you said, "My house; my home."

A. That is right.

Q. I said, "In your home?" You said, "Yes. Sure."

I said, "Who was there?"

Then there was an aside.

Mr. Gilligan: I will leave it to you—

Mr. Houston: All right.

By Mr. Houston:

Q. Then you said, "Mrs. Hodge." And I said, "Mrs. Hodge?" And you said, "That is right."

I said, "Who else?"

You said back to me, "Who else?"

I said, "Anybody but Mrs. Hodge—who else was there?"

And you said, "Mrs. Hodge."

A. That is right.

Q. I said, "Nobody but Mrs. Hodge—are you sure?"

And you said, "That is right."

Then I asked, "What did Mrs. Hodge say or do before you signed that paper?"

You said, "Well, she say I have to sign. That is all. I am supposed to sign. Any time I sign it."

268. A. And—and—

Q. You say you didn't say that?

A. I say I have to sign the paper because the negroes can't move before the kids come.

Q. Did you say this?

A. I say that, now I don't know what you say there.

Q. I said, "So you just signed that?"

You said, "That is right."

A. That is right.

Q. I said, "How long was Mrs. Hodge at your house at the time you signed that paper?"

And you said, "What do you mean, how long?"

I said, "How long did she stay there?"

And you said, "Well, she no stay all night; just I sign and she go home."

A. That is right.

Q. I said, "She just walked in and said, 'Please sign the paper' and walked home?"

And you said, "That is right."

Then I asked you, "How many pages were on the paper?"

You said, "I no count."

A. That is right.

Q. "Did Mrs. Hodge tell you?"

"Answer: Well, I pay no attention. I just sign my name.

That is all."

269 And then I said, "I say: 'Did she tell you?' And then you said, 'No. She tell I have to sign. I sign.'"

Then I asked, "That is all she said?"

And you said, "That is right."

And then I asked, "Did she explain to you what that paper was?"

And your answer was, "Well, I no tell anything, but Mrs. Hodge, she bring the paper. I sign it. She have to go. She has to start to cook. I have to cook, too, for my husband. I have no time to talk."

A. That is right.

Q. Then I said, "I see: Fine."

Now, is that a correct statement as to how you testified on your deposition?

A. Well, I understand what you say now. You say it again.

Q. Is that, what I have read to you, correct as to what you said over there at Mr. Middlemiss' office?

A. That is right.

Q. What did you pay for your house, Mrs. DeRita?

A. \$5200.

Q. And when did you move in?

A. 1941.

Q. You paid \$5200?

A. That is right.

270 Q. And moved in in 1941 or '42?

A. '41.

Q. At that time, were there negroes living behind you on Adams Street?

A. Yes.

Q. Now, do you have your first papers with you?

A. No.

Mr. Houston: I think we called for those. Will you ask about them?

Mr. Gilligan: Well. Do you have them at home?

The Witness: What, Mr. Gilligan?

Mr. Gilligan: The first papers.

The Witness: No, because my husband is a citizen. I wait for the full papers, no first one.

By Mr. Houston:

Q. Have you up to the present time made an application for citizenship?

A. Yes.

Q. When?

A. I can't explain,—March—I don't know.

Mr. Gilligan: You say in March?

The Witness: March.

The Court: Of this year?

The Witness: Yes, sir.

271 By Mr. Houston:

Q. March of this year in this Court?

A. That is right,—in the school.

Q. Did you come to this building?

A. I go to school, I come to pay over here.

Q. You went to Webster School?

A. That is right,—Nathaniel.

Q. 10th and H Streets, N. W.?

A. That is right.

Q. Americanization?

A. That is right.

Q. Did you go to the Americanization school there?

A. Yes.

Q. When did you go to the Americanization school?

A. What do you mean—that, you say again, please?

Q. Yes. Have you been going to classes?

A. Yes.

Q. Where?

A. In the school.

Q. That is down at the Webster School at the same place you made your application?

A. That is right.

Q. That is down at 10th and H Streets?

A. Yes.

272 Q. When did you go to school, when did you begin going to school?

A. I can't understand that.

Q. When did you begin going to school?

A. I can't catch.

The Court: When was the first time you went to the school?

The Witness: Well, the first time, the day before I go put in application, that night go to school.

By Mr. Houston:

Q. Now, are you still going to school?

A. Not yet.

Q. How many times have you been to school?

A. Well, I go three months.

Q. Have you started?

A. No, I finish my school.

Q. You have already finished?

A. That is all. I just finish, no go no more.

Q. You have been going three months?

A. Yes.

Q. Now, how old are you, Mrs. DeRita?

A. 54.

Q. You came to the United States in '35, and your province is what, in Italy, where were you born?

A. Italy.

Q. Did you have any prejudice against negroes before you came to the United States?

273- A. I can't catch.

Q. You mean you don't understand what I am saying?

A. No.

Q. Did you have any prejudice, you understand "prejudice"?

A. Yes.

Q. Against negroes before you came to the United States?

A. Well, before I no see the negro, I just see them Washington, D. C.

Q. So the answer is no.

A. No.

Q. Have you had any trouble with negroes on Bryant Street?

A. No.

Q. Now, at the time that you moved in, you had heat and electricity?

A. Yes.

Q. Gas for cooking?

A. That is right.

Q. What kind of heat?

A. Coal.

Q. Hot air or steam or what?

A. Steam.

Q. Steam heat?

274 A. Radiator.

Mr. Houston: I think that is all—just a minute.

By Mr. Houston:

Q. At the time when you first moved in, did negroes live all up and down in back of you on Adams Street, or were there white families back of you on Adams Street?

A. The negroes live on the back.

Q. All right. Now, on Adams Street between First and Second—

A. That is right.

Q. You understand?

A. Yes.

Q. Very many negroes moved in there since the time you moved in?

A. Well, I no see nobody.

Q. You don't see anybody move in?

A. No.

Q. Just let me make sure you understand.

A. Yes, I can understand what you say.

Q. All right. Did you make any inquiry—strike that. Did Mr. Gilligan tell you that the same covenant that is on your house is also on First Street and on Adams Street?

A. No.

Mr. Houston: All right, no further questions at this time.

275 Cross-examination.

By Mr. Urciolo:

Q. Mrs. DeRita, you say you don't read English?

A. That is right.

Q. You don't write English?

A. No.

Q. Do you read any language?

A. Italiano.

Q. How much schooling did you have in Italy?

A. You supposed to say that?

Q. Ask the Judge.

The Witness (Addressing the Court): I have to say?

The Court: Yes.

The Witness: Five years.

By Mr. Urciolo:

Q. Five years?

A. Yes.

Q. Now, did you read this (indicating copy of complaint) or did you not read this before you signed it?

A. Well, I no read myself, somebody else read for me, then explain what it says.

Q. Who read it for you?

A. Mrs. Hodge.

Q. Mrs. Hodge?

A. That is right.

276 Q. Well, did she explain to you that it stated here (indicating) that defendants are citizens of the United States?

A. Yes.

Q. She did explain it to you?

A. Yes, she explained everything.

Q. And you signed it?

A. That is right.

Q. Even knowing that you were not a citizen?

A. That is right.

Q. Tell me, Mrs. DeRita, why did you sign it, knowing that you were not a citizen, and yet you say you understood that, you said you were a citizen?

A. No, I no be a citizen because I no got my paper yet; I signed because I want protect my property.

Q. I know, but paragraph 2 of this complaint states here that you are a citizen.

A. No, I no say that, I no say I no citizen.

Q. In other words, you know, don't you—

A. I can understand, I am not a citizen yet.

Q. I am stating to you, Mrs. DeRita, this paper says that the plaintiffs, that means the people who are suing to put the negroes out, that they are citizens. Now, you say you

understood it, yet now my question is—understanding that this paper stated, alleged, that you, that the plaintiffs, the people who are suing, are citizens and you, knowing that you are not a citizen, why did you still sign that?

A. I sign because it is my property, outside, my husband is a citizen, which we buy together, I buy it together, me and my husband together, I am supposed to decide.

Mr. Urciolo: The answer is not responsive. I again make a move that this plaintiff be stricken as plaintiff, because it seems quite clear that these poor—

The Court: The motion is overruled.

Mr. Urciolo: If Your Honor please, I have not even stated my reason.

The Court: Yes.

Mr. Urciolo: My reason is that these poor people have no more intentions of signing, bringing any such allegation, that they were morally forced and coerced by Mrs. Hodge, they haven't any idea what they were signing or what they had said or what it was for.

The Court: The motion is overruled.

Mr. Urciolo: That is all.

Mr. Houston: There was something, Your Honor will recall I just got the deposition this morning at the trial and Mr. Middlemiss has just put it on the desk and I wanted to ask about this (indicating).

278 Further cross-examination.

By Mr. Houston:

Q. Mrs. DeRita, do you visit Mrs. Hodge?

A. No.

Q. That is, you only visit Mrs. Giancola and Mr. Giancola?

A. That is right.

Q. Now, when you say that the presence of negroes is depreciative, do you know what depreciative means? I am not trying to confuse you. Do you know what it means? If you don't, I will try to use some other word.

A. I don't know for me, I can't explain.

Q. It means, carry down, lower, take from here down (indicating), like that (raising and lowering hand). Do I

make myself clear now? If I don't, tell me, because I want you to understand.

A. I can't understand this word.

Q. When you said that the presence of negroes was ruinous, do you know what "ruinous" means, to ruin something?

A. Yes.

Q. Ruin the property?

A. Yes.

Q. Did you mean it would ruin the property value, the sale price?

A. No.

279 Q. Not the property value?

A. No.

Mr. Houston: I have no further questions.

Mr. Gilligan: That is all.

(Witness stands aside.)

Mr. Gilligan: Call Mr. DeRita.

Whereupon—PASQUALE DE RITA was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. Speak clearly, Mr. DeRita, and don't get excited, and try to get the question.

State your full name.

A. My full name, Pasquale De Rita.

Q. And your last name?

A. De Rita—

Q. What is your color?

A. White.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. Were you born here?

A. No, I was born in Italy.

280 Q. Italy?

A. Yes, been a citizen since 1929.

Q. 1929?

A. Yes, sir.

Q. Do you have your naturalization papers here?

A. Yes, sir, I have it here (passing document to clerk).

Q. Where do you live?

A. I live 128 Bryant Street.

Q. With your wife?

A. My wife.

Q. Your wife and you?

A. Yes.

Q. Do you and your wife own that house?

A. Yes, sir.

Mr. Gilligan: That is all.

Now, if Your Honor please, I am deliberately restricting my direct examination so that these gentlemen, if they want to go off into a new field, will have to be responsible, because I want them to be responsive to what I asked him.

Mr. Houston: Now, let me see, Mr. Gilligan, I was trying to read the exhibit.

Mr. Gilligan: I thought you told me it was all right.

Mr. Houston: I am trying to get my position here.

The Court: Of course, Mr. Gilligan knows it was to protect himself in that regard, to make appropriate objections when the questions arise.

Mr. Houston: I am trying to get the scope of the direct examination. This was very short. Am I right that you asked him for—

The Court: Put your questions and I can rule on them.

Mr. Houston: I want—

The Court: Put your questions.

Mr. Houston: You see, Your Honor, you have already told me that I have to be restricted in my cross by the direct, If I did not hear the direct—

The Court: You did not hear the direct examination?

Mr. Houston: I was reading—

The Court: All right, read the examination, Mr. Reporter.

You (addressing Mr. Houston) must have been reading something else.

Mr. Houston: I was trying to examine the exhibits—

The Court: Go ahead and read the examination.

(Whereupon, the record was read by the reporter.)

Mr. Gilligan: May I offer this as an exhibit?

(The document referred to, Naturalization certificate of Pasquale De Rita, was marked "Plaintiff's Exhibit No. 8," and received in evidence.)

282 Mr. Houston: I want to move at this time that the name of Pasquale De Rita be stricken as plaintiff, on the ground that he has not testified he desires the covenant nor any action from this Court. All he testified to is simply ownership of his house, and that is all.

The Court: The motion is overruled.

Mr. Houston: Then, Your Honor, under those circumstances I decline to ask any questions.

Mr. Gilligan: That is all,—pardon me.

Cross-examination.

By Mr. Urciolo:

Q. Mr. De Rita, when you became a citizen in 1929, where did you work?

A. I work—I work in New York City.

Q. New York City?

A. Yes, that is where I take citizenship paper.

Q. Did you ever work with colored people?

A. Work that they help, be colored people.

Q. Did you work with colored people?

A. They help you. They help you, all those places where bricklayer, they help all the people—yes.

Q. How long did you work with colored people?

A. Yes.

Mr. Gilligan: If Your Honor please, I object to this line of examination.

The Court: Objection sustained.

283 Mr. Urciolo: My reason for asking—

The Court: It is not cross-examination.

Mr. Urciolo: I will try to justify it, if I may. My reason for asking is this, again on the same theory that these people have no innate prejudice against the colored people, that it has all been induced by one single person on Bryant Street who has nurtured, so to speak, these people.

What I am trying to prove is that they were born without prejudice.

You never had prejudice—

The Court: You are not speaking from the record.

Mr. Urciolo: What I am trying to develop by my questions to him which was objected to—

The Court: But there is nothing in the record to support your statement, so the Court cannot accept it.

Mr. Urciolo: But I am trying to get it in the record, that he having worked with colored people, has no prejudice.

The Court: I have sustained the objection.

Mr. Urciolo: Well, now, may I ask this:

By Mr. Urciolo:

Q. Mr. DeRita, did you have any prejudice before you came to the United States?

Mr. Gilligan: Object to the question.

The Court: Sustained.

Mr. Urciolo: Very well.

284 By Mr. Urciolo:

Q. Mr. DeRita, did you read the complaint—

Mr. Gilligan: Object to that, if Your Honor please, there was nothing asked about the complaint at all.

Mr. Urciolo: I think I have a right to ask if he signed this complaint.

The Court: He may answer it.

Mr. Gilligan: I withdraw the objection.

By Mr. Urciolo:

Q. Did you sign this complaint (exhibiting document) asking that the negroes move out?

A. Yes, I sign, I sign the paper passed to me, Mrs. Hodge passed to me and I signed.

The Court: You say you understand it?

The Witness: Yes, sir.

By Mr. Urciolo:

Q. Did you read it?

A. I want to keep my property.

Q. Did you read it?

A. Read?

Q. Did you read this—

The Court: Will you stand back there, and he won't have to look away from me.

Mr. Urciolo: Yes, Your Honor.

The Court: He wants to know whether you read
285 this complaint, did you read it before you signed it?

The Witness: The paper, I sign, somebody spell for me, Mrs. Hodge spell it to me before I sign. Mr. Gilligan say he spell it to me, I sign it to defend my property.

Mr. Urciolo: Your Honor, I ask that the witness be made to answer the question.

The Court: I think he has, in effect, answered it by saying that he did not but it was explained to him.

Is that what you said?

The Witness: First time I signed.

The Court: Somebody explained it to you?

The Witness: Spell it to me.

The Court: Who did it?

The Witness: Mr. Gilligan first time spell it to me.

The Court: Yes?

The Witness (Continuing): To defend my property. After second time, Mrs. Hodge come to my house, I sign, spelled to me, Mr. Giancola too, Mr. Giancola spell it to me all the same.

The Court: All right, next question.

By Mr. Urciolo:

Q. Can you read and write English, Mr. DeRita?

A. I read a little, not much. I no go through the school.
I school in Italy.

Q. Would you read this covenant (handing paper
286 to witness)?

A. I need glasses.

The Court: Glasses?

Mr. Gilligan: He explained himself. I think the question is not responsive.

The Court: Objection sustained.

Mr. Urciolo: One more second, please.

Your Honor, I will have to ask the Court's indulgence. These depositions were not given to us until this morning. His apparently is not here yet, and I ask the Court, please, that I may defer further examination until I can get the transcript of the depositions. I do not think I am asking too much, Your Honor, when you consider that, after all, I am a defendant, defending only the second case, and I had a right to rely on the fact that the first case should be dis-

posed of before mine came up, and, therefore, I ask that I be allowed to defer further cross-examination until I get the deposition.

I do not think, sir, that is asking too much.

The Court: The request is denied. The progress of this Court cannot be held up because depositions have not been returned.

By Mr. Urciolo:

Q. Mr. DeRita, do you object to working with colored people?

287 Mr. Gilligan: I object, if Your Honor please.

The Court: Sustained.

The Witness: My—

The Court: Wait a minute.

Mr. Gilligan: Don't answer.

Mr. Urciolo: No further questions.

Mr. Gilligan: That is all.

288 The Court: Now, you are called.

Thereupon, RAPHAEL G. URCILO was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. State your full name.

A. Raphael G. Urciolo.

Q. What is your business?

A. Real estate.

Q. Where is your office?

A. 907 New York Avenue, N. W.

Q. Where do you live?

A. 100 Webster Street, N. W.

Q. Did you bring with you the letter dated June 17, 1944, which you received from me?

The Witness: I refuse to answer that question, Your Honor.

By Mr. Gilligan:

Q. You were subpoenaed, were you not, to bring that letter?

A. I refuse to answer that, Your Honor, on the ground that there are two questions instead of one. The question implies that I received a letter. If you will separate
289 them, I will be glad to answer them.

The Court: The objection is overruled. Just answer him, please.

By Mr. Gilligan:

Q. Did you bring with you the letter from me dated June 17, 1944?

A. I did not.

Mr. Gilligan: If Your Honor please, I would like to offer in evidence the copy of that letter which I sent to you (addressing the witness).

He was subpoenaed regularly, and ordered to bring the letter with him.

The Court: Did you subpoena him?

Mr. Gilligan: He was subpoenaed, duces tecum, and asked to bring this letter, and the answer is that he did not bring it.

I think I will show it to you (addressing witness) and will let you see whether or not it is a copy. It is the same, other than the lead pencil marks, and tell us whether that is the letter you received.

(Letter passed to witness.)

The Witness: I did receive that letter.

Mr. Gilligan: And, if Your Honor please I offer it in evidence and would like to have it marked as Plaintiffs Exhibit No. 9.
290

The Court: May be marked and received.

(Said letter, dated June 17, 1944, Gilligan to Urciolo, was marked "Plaintiffs' Exhibit No. 9," and received in evidence.)

Mr. Houston: May I call Your Honor's attention, for the record, to the fact that I think Mr. Gilligan will agree that he is examining under 29,943 and not examining Mr. Urciolo on 26,192?

Mr. Gilligan: Correct.

Mr. Houston: Simply so it will be clarified on the record.

Mr. Gilligan: I would like to read this letter, dated June

17, 1944, addressed to Mr. Raphael G. Urciolo, 907 New York Avenue, N. W., Washington, D. C.:

"DEAR MR. URCILOLO:

"Despite the fact that, in my telephone talk with you several weeks ago, it was my understanding that you had no intention of selling or leasing the houses you own in the 100 block of Bryant Street, N. W. (under deed covenant), my attention has been called to the fact that negroes have looked at one of these houses, and the rumor is that you have several under contract of sale to negroes. The houses in question are 118, 134, 144, 150 and 152 Bryant Street, N. W. I sincerely hope that the information and the rumors are untrue. However, I am putting you on notice, both for yourself and for the straw parties in whose names you may hold these properties, that injunction proceedings will be instituted against you and any negroes who may take over these houses or any of them.

"Yours very truly, Henry Gilligan."

And,

"Post-cript. In view of your full understanding of the terms of these deed covenants, I notify you also that in any action made necessary by you, it will be the aim of the complainants not only to enjoin but to enforce the penalty clause in the covenant."

292 Q. Mr. Urciolo, do you still own the houses at 126 Bryant, 144 Bryant and 152 Bryant Street, Northwest, Lots 109, 135 and 139—

A. Wait a minute.

Mr. Houston: Have you identified them?

The Witness: Give them to me again.

By Mr. Gilligan:

Q. Would you like to have them by street numbers?

A. To the first three, I answer yes.

Q. 126 Bryant Street?

A. Yes.

Q. 144 Bryant Street?

A. Yes.

Q. 152 Bryant Street?

293 A. Yes, sir.

Q. You don't believe in restrictive covenants or deed covenants, do you?

A. Definitely, I do not, against any race or nationality.

Q. For that reason, whenever you get an opportunity to do so, you do your best to defeat them?

A. Always.

Q. In other words, you are a defendant in a case at 55 Randolph Place, are you not?

A. I am one of 12 defendants there, yes.

Q. Well, 55 is a special case, and there is a lot of other defendants in another case; you are a defendant in both cases?

A. I am.

Q. Yes, so is your wife.

A. Yes.

Q. So is your mother, Constance—what is her name?

A. Yes.

Q. And your father.

A. Yes.

Q. In other words, you have some of those properties in straw names?

A. Yes.

294 Q. And it is for that reason, the fact that you do not believe in covenants, that you have sold these three houses which are occupied by Mr. Rowe, Mr. Savage and Mr. Stewart, to colored people?

A. Not for that reason alone.

Q. Not for that reason alone?

A. I sell houses to whoever applies for them.

Q. I am asking about these three houses, you sold these three to people, Rowes, Savage and Stewart,—you did it because you don't believe in this type of covenant?

A. I wouldn't say I did it because of that, but certainly that would not stop me; the fact there is a covenant certainly would not stop me.

Q. Why did you do it?

A. Because I am in the real estate business, buying and selling houses every day.

Q. Therefore there was a good opportunity for you to do that, and you sold them to those colored people.

A. I thought it was an excellent opportunity, especially

since one had already been sold to colored, and he had been allowed to remain for a year alone.

Q. You thought that would justify you in selling these other negro families—to these other negro families, and they are negro, aren't they?

A. I presume they are. I never saw these people, so I have not seen yet who have bought. I have not seen the Rows, for example. I think they are defend-
295 ants. I have not seen them yet.

Q. You said they were negroes, in answer to my question.

Mr. Houston: Read the record.

The Witness: If I did, I am changing my testimony now, to state that I do not know what they are. Most of the times these calls come over the telephone. I am not going to insult anyone and ask him what his nationality is, particularly over the telephone.

By Mr. Gilligan:

Q. You drew the deed, in other words, to these people, did you not?

A. Yes.

Q. Executed in your office, were they not?

A. Either there or nearby.

Q. It was your own notary public in your office that took them, was it not?

A. No.

Q. Sure?

A. Positive.

Q. You have never seen them, have you?

A. Which ones?

Q. Have you ever seen Mr. Robert H. Rowe?

A. Never.

Q. Isabella J. Rowe?

A. Never.

296 Q. Hubert B. Savage?

A. Yes.

Q. Is he a colored man, by looks?

A. As far as I know he is a colored man or an Indian.

Q. Georgia M. Savage, that is his wife?

A. I don't recall her at all.

Q. Pauline B. Stewart?

A. I have. I saw Miss Stewart for the first time at the title company, as well as Mr. Savage. I saw him for the first time at the title company.

Q. I would like to ask you if you can remember what you paid for the Rowe house which is No. 118 Bryant Street.

A. I don't remember, Mr. Gilligan, but I would say from \$6,000,—around \$6,000; most likely less.

Q. What did you sell it for?

A. It was sold for over \$9,000.

Q. So that you had quite a good profit in the sale there?

A. An excellent profit.

Q. By the way, are you a real estate broker?

A. I am a real estate broker.

Q. With a license from the Real Estate Commission?

A. I have a license from the Real Estate Commission.

Q. As a broker?

A. As a broker.

297 Q. If I should call attention to the fact that this second deed of trust in that house at—at the Rowe house; put it that way—that it called for \$3,993.66, you would probably understand that that is correct?

A. (No response.)

Q. Do you know where it was executed?

A. I don't know where that was executed.

Q. You were not present when it was executed?

A. No.

Q. Did you draw the trust?

A. I drew the trust.

Q. All you do is draw it and keep away from them so that you don't have to see them until you send them to the title company.

Mr. Houston: If Your Honor please, I object—

Mr. Gilligan: He can answer.

Mr. Houston: He is arguing with the witness.

The Court: Sustained. Put the question in another form.

By Mr. Gilligan:

Q. You do your best, do you not, not to come into contact with the people who buy from you, if you know them to be negroes, in these covenanted houses?

A. I don't say that at all. I am only too glad to see them. The only reason I didn't see these, was because Slaughter & Co. sold the house to them; and, at the time of

298 the settlement, I probably had another engagement and didn't go to the title company, as I did in the other two cases.

Q. Suppose you had seen them and made up your mind that they were colored, that would not make any difference to you, would it?

The Court: What do you mean by "colored"?

Mr. Gilligan: Negroes or with negro blood.

The Witness: That would make no difference to me whatever. I have no prejudice whatsoever.

By Mr. Gilligan:

Q. Do you know whether or not any of your agents at this time are endeavoring to sell any of the three houses which you own to negroes?

A. Whom are my agents, Mr. Gilligan?

Q. People who work for you. Let me put it this way and ask you this: A young man who works in your office—so he says—brought a negro to 126 Bryant Street and asked for permission to go through it, within the last three days. Did you know that?

A. 126?

Q. 126.

A. No, I didn't, but I will add this, for your information: I certainly would have no objection to any of them doing it.

Q. So that even while this suit is pending, it would
299 not make any difference to you if you could get a negro purchaser, you would take one, if you could get the price you are asking?

A. I think I would.

Q. In other words, what you are interested in is making as much money as you can possibly make out of the houses you buy and sell?

A. That is correct.

Q. Doesn't make any difference to whom you sell?

A. No, it makes no difference, except that I have an added reason, the reason being that since it is about five times as hard for colored people and foreigners to get houses, I always prefer, if I had a choice between selling to a colored man or a foreigner, and another—I would prefer to sell to the colored man because he has so much harder time getting a house than the other person.

Q. So that no matter whether it is covenanted or not—

A. I don't believe in covenants at all.

Q. And they have so much trouble, whether covenanted or not, whether as a lawyer you know that the courts of the District have upheld covenants—that makes no difference, you will still sell to colored?

A. I would not say that; I would say if there were a definite rule,—about covenants—then, of course, I would not violate it.

300 Q. And you do not know of any definite rule in the District of Columbia?

A. I am afraid it is rather jumbled, in *Hundley v. Gorewitz*; the Court of Appeals having reversed the lower court and I think that reversed the situation.

Q. You read the entire action?

A. Read it carefully, every word and read a most interesting dissenting opinion.

Q. I am sure you did; there is no question about that.

Let me ask you this: You authorized Mr. Houston to bring suit for you prior to selling these people houses,—selling these houses to colored people?

A. I did.

Q. In Civil Action 27,958, marked Plaintiff's Exhibit No. 1, and I ask you if this is the suit you authorized him to bring, (indicating Exhibit 1).

A. Yes, that is the suit I authorized him to bring.

Q. What was it for? What were you going to try to do?

A. That was a suit to quiet title.

Q. Go ahead and explain what you mean.

A. Well, there were in that square, there were some houses that were perpetually covenanted against negroes—

Q. Do you know which ones they were?

A. Yes, I do.

Q. Which are they, just roughly?

301 A. Houses 114 to 154 Bryant Street, and houses 135 to 151 Adams Street.

Q. Is that included in this suit?

A. To my recollection, I was discussing it, but I don't recall.

Q. Look at it and see.

A. It has been several years.

Q. That hasn't been several years. When was this suit brought?

A. At least two years ago.

Q. Look and see if you can tell when it was filed. Tell the Court.

A. March 5th.

Q. What year?

A. '45, but I mean I started to work on this at least three years ago.

Q. On Bryant Street, before you bought any of those houses?

A. Oh, I have had them about three years.

Q. You have?

A. Yes.

Q. This was filed on March 5, 1945, by Mr. Houston and with your instruction?

A. Correct.

Q. And the theory was that you wanted to do
302 away with all of these covenants on that block, by quieting the title and removing the cloud?

A. That is only one covenant.

Q. The covenant as to each house?

A. Yes.

Q. So that you could then go ahead as to any of these, selling any of those houses legitimately, legally to colored—

A. So that I could sell to anyone who wanted them.

Q. You would not have to bring suit like this in order to sell to white people, would you?

A. No.

Q. And it was so that you might sell to colored or negroes?

A. Yes.

Q. That is all right; and after filing this suit, as you did, on March 5th, 1945, thereafter you sold three of these houses to negroes?

A. I think it was. We sold them prior—

Q. Well, the deeds did not go on record till afterward; let's put it that way.

A. Well, about that time—about that time—well, a week before or after; that, I can't remember.

Q. I will enlighten you by telling you that they all went on record after this was filed, and following the sale of those houses to negroes—you authorized Mr.
303 Houston to dismiss this suit.

A. I did.

Q. After they had been filed, so that you couldn't do it without question, so that there isn't any question on earth whatever but that you knew about the covenant.

A. Yes, I knew all about the covenant.

Q. First of all, were you going to try to do this in a perfectly straight-forward legal way, bringing action, and getting it out of the way through Court action?

A. What was your question again?

Q. I say, first of all you were going to do it in a perfectly straight-forward legal way by filing this action and getting the covenant set aside?

A. Yes.

Q. And then, getting an opportunity to sell three of the houses very advantageously, you decided to go ahead and sell them to negroes?

A. That is substantially correct. Whenever I get calls for them, I sold them.

Q. Now, let's see,—you stated that you made, on the Rowe house, about how much money?

A. Roughly, \$3,000.

Q. On the Stewart house, can you place that one?

A. Yes, about the same.

Q. Well, wait a minute—and the Stewart house, your deed of trust, instead of being \$3,993.66, your second deed in which Charles H. Houston is trustee, calls for \$4,193.51, that is about your profit represented there.

A. Roughly, not exactly; because in the meantime the trusts had been paid down, the first trust had been paid down somewhat.

Q. But they did pay you some cash, too?

A. But I think they had been paid down more than the cash.

Q. That is roughly correct?

A. Roughly correct.

Q. Let's take the Savaga house; the deed of trust there would indicate that Mr. Houston is also the trustee, and the trust is for \$3,884.74; is that about the amount of profit you made?

A. About.

Q. So that you made a pretty good profit on these?

A. Certainly.

Q. It pays to go into court and let yourself be sued, by trying to defeat the covenant; look at the money you make.

A. So that people can't hereafter go into court saying that negroes ruin the neighborhood. What this does is to increase rather than decrease the value.

Q. You have no use whatever for the white population, the white people in these places, at all?

A. I have no interest whatsoever in a man's
305 color; only what he is. I certainly would prefer an educated college professor, so-called colored, to an uneducated filthy white. To me, it is the man; not the color.

Q. Let me ask you, just to get your views as to the color, now—you would prefer a well educated negro to a well educated white man?

A. No, I would make no distinction.

Q. None whatever?

A. I would treat them equally, then.

Q. So that the fact that these houses on Bryant Street, 114 through 152, were all occupied by white people, white owners or tenants, with the exception of the Hurd house, that didn't make any difference to you as to whether or not those people would like you selling to colored?

A. That was their business; not mine.

Q. That is what I say. Are you planning on moving into 126 Bryant Street, yourself?

A. Not at present; no.

Q. You are not?

A. No.

Q. Are you contemplating it in the future?

A. No.

Mr. Gilligan: I think that is about all I want to ask you.

The Court: Mr. Houston.

306 Mr. Houston: Just a minute, your Honor.

Mr. Gilligan: Just a minute; I have one other question.

By Mr. Gilligan:

Q. You knew, of course, when you sold these houses to negroes that there was a suit pending against the white people who sold to Mr. and Mrs. Hurd, did you not?

A. I had heard that there been, there was a suit; and I knew as a fact that there was a suit; but I figured it had continued so long in court without action that it had been abandoned, as happens in so many of these cases.

Q. Did you consult Mr. Houston before you sold the three houses?

A. No, indeed.

Q. Do you know, or did you, that Mr. Houston was the attorney for Mr. and Mrs. Hurd in that case?

A. I had heard he was, yes.

Q. He is your attorney—has been?

A. He has.

Q. And without consulting your attorney, who was representing this defendant in a suit already pending in that block, you just went ahead and sold the houses to negroes?

A. I used my own judgment; I don't have to have his counsel for that.

Q. You know that the reason for failure to get that case was that it was necessary to publish against non-residents?

307 A. I had heard that.

Q. So that you knew there was a suit pending?

A. Yes.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Houston:

Q. Mr. Urciolo, did you sell the Hurd house?

A. I certainly did not.

Q. Either as owner or broker?

A. Neither. I had no connection whatsoever with the Hurd, either directly, indirectly, or otherwise.

Q. Now, do you sell all the houses through your office, or did you list the houses through other real estate firms?

A. I listed them with others, 99 per cent of the time. We always list with other firms, and first contract come, first acted upon, if it is satisfactory, of course.

Q. Now, take the matter of the prices in the case of these three houses. Did you have to pay commissions out of the sales price on any of these?

A. Yes, full commission in all three cases.

Q. So that that cuts down your commission. How much would the commission be, approximately \$450?

A. Roughly that.

Q. On each house?

A. Roughly that.

308 Q. So that of the profit that you mentioned, there would have to be deducted the commissions?

A. Yes, sir.

Q. Did you make any repairs or anything to any of these houses before they were sold?

A. Yes.

Q. Approximately how much did you spend, say, on the Rowe house, in repairs?

A. Oh, the Rowe house perhaps \$300, or \$400.

Q. And the Savage house?

A. In the Savage house I made little or no repairs.

Q. In the Stewart house?

A. In the Stewart house, at least a thousand to \$1500.

Q. And would that have to be taken off the amount of money that you have already listed as being a profit in the transaction?

A. Well—yes.

Q. So that repairs and the commissions and the interest on the carrying charges on the houses would all have to be deducted?

A. Naturally.

Q. Plus taxes?

A. Naturally.

Q. How long did you hold these houses before you sold them?

309 A. A couple of years.

The Witness: I have to guess, Your Honor. I sell so many houses for so many people, I naturally have to approximate.

By Mr. Houston:

Q. You are not the first person to sell to a negro or a person supposed to be a negro, on Bryant Street, are you?

A. I was not, unless Mr. Hurd is not a negro; then, I would be the first to sell to a negro.

Q. As a matter of fact, it was a fact that Hurd was—Hurd's family was in Bryant Street and apparently getting along well—Did that have any influence on your opinion to sell these other houses?

A. That had no influence on me whatsoever. That is their worry, not mine.

Q. Now, it is an allegation in this suit that ownership,

or occupancy, by negroes is absolutely ruinous of the property here on Bryant Street. Is that true or false?

A. That is absolutely the most absurd of absurdities.

Q. Is it true or is it not true that because of the restrictive covenants creating an artificial limitation on the market, so far as negroes are concerned, that negroes are forced to pay more for antiquated old houses?

A. They have to pay 30 to 40 per cent more.

310 Q. Could you have sold these houses to whites for the same amount of money that negroes paid for them?

A. I don't believe the whites would pay even the trusts on them.

Q. Which would amount to what?

A. Four to five thousand dollars; except perhaps to a speculator who is just waiting to see what is going to happen. They are white elephants. The whites don't want them, the negroes can't have them.

Q. Now, did you know the race of these particular persons at the time you made the contracts of sale?

A. I did not see these people, two of them, until at the title company. One, the ~~Rowes~~, I have not seen to this day. The Stewart house was sold by R. W. Horad, a real estate firm; the Rowe house was sold by Slaughter & Co. on 17th and M Streets. They have their office across from the Mayflower.

Q. Is that a white firm or a colored firm?

A. A white firm, to the best of my knowledge. I never know who is white and colored, as an anthropology student—a student of anthropology—I certainly wouldn't make that horrible error, and if the Savage house, was sold to the best of my recollection by the Park Road Housing Commission.

Q. Now, Mr. Urciolo, what do you consider the usual dividing line between the white and negro populations in that area.

311 Mr. Gilligan: If Your Honor please—go ahead. I won't object to that.

Mr. Houston: That is all right. I think I have gone about as far as I can, as far as the scope of the direct examination conducted by Mr. Gilligan, and I simply announce that at the proper time I will call Mr. Urciolo back to the stand.

Mr. Gilligan: I would like to ask two or three more questions.

Redirect examination.

By Mr. Gilligan:

Q. Mr. Horad is understood to be a negro real estate man, is he not?

A. He looks whiter than I.

Q. I didn't ask you that.

A. I don't know.

Q. You never heard him say that he was a negro?

A. (No response.)

Q. Think back.

A. I think I heard him say that he was a negro, on the stand.

Q. I think—I wonder if you read—Park Road Housing Company,—who is that?

A. That is owned by Dr. Napoleon Rivers.

Q. Is he a negro?

A. He is a negro.

312 Q. Do you know a Mr. Heeney of Slaughter & Co.?

A. Yes.

Q. Do you know as a matter of fact that it was Mr. Heeney who sold the house to Hurd—do you know whether or not it is?

A. He sold the house to the Rows.

Mr. Houston: Rowe?

By Mr. Gilligan:

Q. Did he also sell the house to Mr. and Mrs. Hurd?

A. I heard that.

Q. Yes, and do you know whether or not he accepted service of the papers in the complaint against the non-resident defendants, Ryan—this all a part of proper cross examination.

A. That,—if I testified as to that,—it is only hearsay.

Q. All right, you needn't answer the question.

A. I heard he did.

Q. You needn't answer the question.

I ask you whether you had sold any of those houses. I want to make sure of that—

Mr. Houston: May I see that?

Mr. Gilligan: Sure; forgive me (passing paper writing to counsel.)

By Mr. Gilligan:

Q. I show you a letter dated March 20, 1945, on the
313 letterhead of Urciolo Realty Company, addressed to Ernest W. Pearson, 126 Bryant Street, Northwest, Washington, D. C., and ask if that is from your office?

A. That is from my office.

Q. Suppose you read it to the Court.

A. (Reading.) "March 20, 1945.

"Mr. Ernest W. Pearson, 126 Bryant Street, N. W., Washington, D. C.

"DEAR MR. PEARSON:

"Please be informed that premises 126 Bryant Street, Northwest, has been sold through the Park Road Housing Commission, 1036 Park Road, Northwest. All future transactions will have to be made through that office.

"Yours very truly, Urciolo Realty Company, by George L. Cates."

Q. Do you know to whom you had sold that house?

A. That I can't remember.

Q. Perhaps I can refresh your memory.

Mr. Gilligan: I would like to have this entered, if Your Honor please, as Plaintiffs' Exhibit, whatever it might be.

(The letter read by the witness, under date of March 20, 1945, was marked "Plaintiffs' Exhibit No. 10, and received in evidence.)

314 By Mr. Gilligan:

Q. Just to refresh your memory, maybe you can tell from that to whom the property had been sold by you?

A. I recall, E. W. Pearson—no, I am sorry.

Q. Notice down there (indicating)?

A. Oh, yes, yes—Smith, Corporal Nathaniel.

Q. Oh, Corporal Nathaniel Smith. And Smith & Carr?

A. Yes.

Q. Is he a negro?

A. I have never seen him.

Q. Did it go through?

A. It fell through.

Q. Tell why.

A. Their attorney, Mensch, a certain Mr. Mensch called up and said that they didn't want to buy the property.

Q. Do your best to remember now as to just the reason they gave you.

A. I think that the reason that they did not want to buy the property is because their attorney, Mr. Mensch, advised them not to buy it.

Q. What?

A. One, the price was too high; two, he had been unable to gain entrance into the premises, the tenant would not allow him to go in; three, because he could not get a loan because the property had a restrictive covenant on it.

315 Q. And you released them from it?

A. And I sent him back the money.

Q. Did you ever get any offer for that property from any white man?

A. Never.

Q. Would you have dealt with a white, if you could have dealt with a white man for that property?

A. Certainly.

Q. But nobody offered to buy it?

A. Nobody.

Q. How about the tenant in the property?

A. Never made me an offer.

Q. Did he ever make an offer through your office?

A. Not through my office or any other.

Q. You and the others certainly get together from time to time and talk over questions of the office, and offers?

A. Certainly.

Q. And nobody in your office ever called your attention to the fact that Mr. Pearson, in the house, wanted to know whether or not he could not buy that house?

A. This is news to me. I will make him a tender now, to sell him the house.

Q. I am asking what happened to the—what happened before; that is all.

A. Mr. Gilligan, I certainly would not refuse to sell
316 the property to a man because he is white or because he is a negro. The point with me is, especially, since

most of our work is done over the phone,—whoever makes me the best offer, I take it.

Q. Best offer?

A. The best offer, naturally.

Q. That is right.

A. But I mean, I won't refuse because it happens to be white or negro.

Mr. Gilligan: That is all.

Mr. Houston: And the best offer you have received on the property on Bryant Street, the properties which have been sold, you have taken without knowing whether they were colored or white?

The Witness: That is correct.

By Mr. Gilligan:

Q. Even though the people who called you were negro real estate agents?

A. Even so.

Mr. Gilligan: That is all.

Recross-examination.

By Mr. Houston:

Q. Just a moment. It is not a fact, is it, that in the District of Columbia negro real estate agents are limited to selling houses or buying houses to or from negroes only?

317 A. I don't understand.

Q. It is not a fact that negro real estate operators in the District of Columbia are restricted to buying and selling houses for negroes only?

A. Of course not. There is no such rule in any real estate act. I know that as a fact, because I have read it.

Q. Well, as a matter of fact, don't you also know that negro real estate operators do buy and sell property for whites?

A. Definitely.

Q. So that the very fact that it is a negro real estate firm will be no indication whatsoever as to who the purchaser was?

A. None whatsoever. I have an offer in my pocket from a negro agent offering to sell me property in a definitely white neighborhood,—I have one before me now.

Mr. Houston: I have nothing further.

Mr. Gilligan: That is all.

I would like to call just one other witness, if Your Honor please, Mr. E. W. Pearson.

Thereupon—ERNEST W. PEARSON was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

318 Direct examination.

By Mr. Gilligan:

Q. Mr. Pearson, state your full name, please, sir.

A. Ernest William Pearson.

Q. Where do you live?

A. At 126 Bryant Street, N. W.

Q. What is your business?

A. Salesman.

Q. Salesman?

A. Yes, sir.

Mr. Houston: Of what?

By Mr. Gilligan:

Q. What kind of salesman, what do you sell?

A. For a packing house, Armour & Company.

Q. Armour & Company?

A. That is right.

Mr. Houston: Meat salesman?

By Mr. Gilligan:

Q. Are you connected with Armour & Company as a meat salesman?

A. No.

Q. What kind of a salesman?

A. Produce.

Q. What?

A. Produce.

319 / Mr. Houston: Produce.

By Mr. Gilligan:

Q. Did you ever have colored people to come to look at your house, sent by Mr. Urciolo?

A. Yes.

Mr. Houston: Just a moment. I would like before you get that, to identify how he knows they were sent by Mr. Urciolo.

Mr. Gilligan: He said they had been sent.

By Mr. Gilligan:

Q. Do you know Mr. Urciolo?

A. Yes.

Q. Where is he in the room?

A. That gentleman (indicating Mr. Urciolo).

Q. Sitting there?

A. Yes.

Q. Did he ever come to the house?

A. I don't think so, I don't recall him ever.

Q. How do you know that anybody coming to your house was from Mr. Urciolo's office?

A. He said he was working for Mr. Urciolo.

Mr. Houston: "He said," I object to that.

The Court: Objection sustained.

Mr. Mr. Gilligan:

Q. Did a negro ever come to look at your house?

A. Yes, they did.

320 Q. Brought by a white real estate man?

A. No, brought by Mr. Rivers. I guess he owns the Park Road Housing Corporation, or some such name as that.

Q. Did you let him see the house?

A. Yes.

Q. When was that?

A. Well, now, I declare—

Q. In a general way, how long has it been?

A. I don't know. Well, really I don't. I was up, I had been up the river fishing for perch, and now that must have been—it must have been early this spring.

Q. Early this last spring?

A. Yes.

Q. Did you ever endeavor to make an offer for the purchase of that house, yourself, to Mr. Urciolo's office?

A. I don't know that I made an offer. I let them know, however, that I was in the market for the house, and that I was a prospective buyer and I merely inquired about the house,—yes.

Q. What was the answer given to you?

A. Well, now——

Mr. Houston: Let's identify Mr. Urciolo's office.

By Mr. Gilligan:

Q. How do you know it was Mr. Urciolo's office?

321 A. Because it had a sign with letters on it, great big, you couldn't see anything but "Urciolo."

Q. You went to the office?

A. Yes. I went up to pay my rent once.

Q. Where you paid your rent?

A. Yes.

Q. Are you paying rent there now?

A. No, sir.

Q. Where are you paying now?

A. Park Road Housing Company.

Q. How long have you been paying it there?

A. Well, I think early this spring, maybe.

Q. Early this spring?

A. Yes, sir. I took no special note of it, I think it was early this spring.

Q. Now, when you were at the office of Mr. Urciolo, you spoke to whom in the office, do you know who it was?

A. No, whoever made out my rent receipt. I don't know whether it was the young lady, or I don't know whether it was an older fellow than this gentleman (indicating). This fellow was busy on the phone at the time, and I didn't have any conversation with him at that time, particular time, but I let it be known that I would buy the house, that I was in the market for the house because I figured I was going to have to move when it changed hands.

322 Q. Did anybody ever come see you from that office about selling the house to you?

A. No, sir.

Mr. Gilligan: Pardon me, Mr. Houston, and Mr. Urciolo, (passing paper to counsel).

By Mr. Gilligan:

Q. Now, I show you this letter and ask you if you received it in regard to the house in which you live (passing paper to witness)?

A. I guess I received that letter just recently.

Mr. Gilligan: If there is no objection, I would like to offer that in evidence as a Plaintiffs' Exhibit.

Mr. Houston: I do object. I want to know what the purpose is.

Mr. Gilligan: I will be very happy to explain it. I am trying to show that Mr. Urciolo probably is not the owner of that house at the present time, although he testified that he owned all three houses.

Mr. Houston: If that is your purpose, I have no objection.

The Court: It may be received.

(Said letter, dated September 6, 1945, Park Road Housing Co. to Pearson, was marked "Plaintiffs' Exhibit No. 11," and received in evidence.)

The Court: Will you read it, please?

Mr. Gilligan: It is dated September 6, 1945, on the letterhead of the Park Road Housing Company, 1036
323 Park Road N. W., Washington 10, D. C.

(Reading): "Mr. E. W. Pearson, 126 Bryant Street, N. W., Washington, D. C.

"My dear sir: We are offering you, for sale or rent, a six-room, two-story, semi-detached house located at 1026 Irving Street, N. E.

"Price: \$8,950; down payment: \$1,400.

"Rent: \$75.00, as is.

"We are offering you the above opportunity with the hope that you may cooperate in helping the owner to occupy the house where you now live.

"Very sincerely yours,

"W. N. Rivers."

By Mr. Gilligan:

Q. Is Mr. Rivers a negro or a white man?

A. He is a negro.

Q. And that is where you are paying your rent now?

A. That is right.

Q. Did he tell you who the owner was?

A. No, I didn't inquire.

Q. You didn't inquire?

A. No.

Q. You don't think it is Mr. Urciolo, do you?

A. Well, Mr. Gilligan—

Q. You can't answer that?

324 A. I never gave it two thoughts.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Pearson, how much rent do you pay?

A. I pay \$42.50 per month.

Q. Would you please describe your house?

A. Yes. It is a six—well, it is a seven room house, seven rooms and bath, and I had rather—I wouldn't want to go much further in describing it than that because it is just a house, that is all.

Q. All right.

A. It isn't in very good condition.

Q. You don't have to go further.

A. It is a brick house.

Q. Three stories, is it not?

A. No, it is two stories with room on—I don't know whether you call that three stories, three in front and two in the rear.

Q. You have a front and rear yard?

A. Yes.

Q. Have a bath?

A. Yes.

Q. Electricity?

A. Yes.

325 Q. Gas?

A. Yes.

Q. Do you have a refrigerator?

A. Well, that I own myself.

Q. Do you have a garage?

A. I guess you would call it that, Mr. Urciolo, although I wouldn't keep a car in it, of my own. I never put any car in there.

Q. Did you go and see this house at 1026 Irving Street that was in Mr. Gilligan's letter that was tendered to you?

A. Yes.

Q. Did you ever make a report on it?

A. What? Yes.

Q. And the answer as to that?

A. I told him the house was impossible for me.

Mr. Urciolo: No further questions.

Mr. Gilligan: One question.

Re-direct examination.

By Mr. Gilligan:

Q. How long have you been living at 126 Bryant Street?

A. Oh, I have lived in that house since 1940.

Q. So that you were there on January 1st, 1941?

A. Yes.

Mr. Gilligan: That is all.

The Court: Wait a minute.

326 Re-cross-examination.

By Mr. Houston:

Q. Have you had any trouble with the negroes on Bryant Street?

A. No, sir.

Q. Now, did Mr. Marchegiani live next door to you?

A. Yes, sir.

Q. Did you ever go in his house during the time that he lived next door to you?

A. Yes, sir.

Q. Did his house and your house—are they just about the same construction, everything?

A. They are the same operation, except this—that Mr. Marchegiani has made a lot of improvements in his house and kept it in shape when mine hasn't been.

Q. But they are the same construction?

A. Same construction, same builder.

Q. Same layout?

A. That is right.

Mr. Urciolo: Mr. Pearson, you say you are a produce salesman?

The Witness: That is correct.

Mr. Urciolo: Do you sell both to white and colored?

The Witness: Yes, I sell to everyone, anyone.

Mr. Urciolo: Thank you, that is all.

327 Mr. Gilligan: That is all.

Mr. Houston: In this connection, may it please the Court, the tender was limited to the fact that this was introduced as evidence that the house 126 Bryant Street had probably been sold out of Mr. Urciolo's ownership.

In view of the testimony in examination of Mr. Urciolo by Mr. Gilligan as to the operations of our negro real estate firms, since it appears that here was a negro real estate firm dealing with a white man, I ask that this same letter be used or be admitted for that purpose also.

The Court: You want it for general purposes?

Mr. Houston: General purposes.

The Court: Any objection?

Mr. Gilligan: That will be all right.

The Court: The limit heretofore placed on it is now withdrawn.

Mr. Houston: With the note, however, that there has been no showing in this case that Mr. Rivers is any agent of Mr. Urciolo's, in the sense that he is operating his own independent business.

Mr. Gilligan: Only this—he says he wants to get the house for the owner.

Mr. Houston: You have not established who the owner is.

Mr. Gilligan: I established who the owner was, Mr. Urciolo was the owner. That is the reason I asked
328 whether or not he was going to occupy it.

Mr. Houston: Let's get that straight. As I understood it, Mr. Gilligan said when he put this letter in, it was for the purpose of showing that Mr. Urciolo did not own it. Now, Mr. Gilligan gets up and says that this letter says Mr. Urciolo does own the house.

Mr. Gilligan: You just had it backward. What I am really putting that in for is to show, if Your Honor please, that you cannot depend on the testimony of Mr. Urciolo.

The Court: I think the effect of his testimony should be argued with the other facts of the case.

Mr. Gilligan: I thought I ought to answer Mr. Houston.

I am inclined to call just one more witness, if Your Honor please.

I would like to call Mrs. Hurd.

Thereupon, MRS. MARY IRENE HURD was called as a witness by and on behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. Will you give your full name, please?

A. Mrs. Mary Irene Hurd.

Mr. Houston: Louder.

329 Mr. Gilligan: Louder, please.

The Witness: Mary Irene Hurd.

By Mr. Gilligan:

Q. Where do you live?

A. 116 Bryant Street, Northwest.

Q. And you are the wife of J. M. Hurd?

A. I am.

Q. Do you have any negro blood in you?

A. I do not know.

Q. What was your mother?

A. I have never seen my mother, nor my father.

Q. Nor your father?

A. No.

Q. And you never had—

A. I have never seen any of my people.

Q. How was that?

A. I am an orphan.

Q. Orphan?

A. Yes.

Q. And you don't know anything about your forebearers?

A. Not at all.

Q. Where were you born?

A. I was told I was born here in Washington.

Q. Washington, D. C.?

A. Yes.

330 Q. And do you know anything about where your mother or father were born?

A. No, I do not.

Q. Know nothing about them at all?

A. Nothing about them, at all.

Q. So that you know nothing about your people at all?

A. No, sir.

Q. Where do you attend church?

A. Holy Redeemer.

Q. The Holy Redeemer Church?

A. Yes, I do.

Q. Is that a colored church?

A. Yes.

Q. Do you have any children?

A. A son.

Q. How old is he?

A. Twenty-two.

Q. Where did he go to school when he was of school age?

A. He went to school at—Dunbar.

Q. Did he go to a negro school?

A. Yes.

Mr. Gilligan: I think that is all I wanted to ask.

Cross-examination.

By Mr. Houston:

331 Q. The Holy Redeemer Church is a Catholic, or what?

A. Catholic Church. Everybody goes there. It is a universal church.

Q. You mean white and negroes go there?

A. Yes.

By Mr. Gilligan:

Q. When you went to school in the District, where did you go to school?

A. I went to a colored school.

Q. A colored school?

A. Yes, I did.

Q. Did you graduate from Wilson Normal Teachers College?

A. No, I did not.

Q. Which school?

A. Grammar school.

Q. Which one,—that's all right; you said it was a negro school.

A. Yes.

Mr. Gilligan: Thank you, that is all.

By Mr. Houston:

Q. Where is your son now?

A. My son is stationed in New York.

Q. By "stationed in New York" what do you mean?

A. He is a sailor.

Q. Merchant Marine or United States?

332 A. First Class Seaman in the Navy.

Q. First Class Seaman in the Navy?

A. Yes.

Q. How long has he been in the Navy?

A. Three years.

Q. He has been overseas?

A. Twenty-five months overseas.

Q. Do you know whether he has been in combat?

A. Yes, he was in one combat duty.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hurd, may I ask you how much money did you pay for your house?

A. My husband bought the house, and I do not know.

Q. How long have you lived in it?

A. Since May the 17th, 1944.

Mr. Urciolo: Thank you, that is all.

Mr. Gilligan: That is all.

And, that is our case, if your Honor please.

Mr. Houston: We have a—

Mr. Urciolo (interposing): Your Honor, I make a motion that the complaint be dismissed at this time, inasmuch as the plaintiffs have not proved that either the plaintiffs are white or that the defendants are colored.

The Court: The motion is overruled.

333 Mr. Houston: I should like to join in that motion, in so far as case 26,192 is concerned.

If Your Honor will recall, 26,192 was not the case in which Monsignor Cooper and Dr.—whatever his name was—put on. Therefore, I have not put on testimony and the defense has not been opened in 26,192.

Now, the only evidence which you have, I respectfully submit—you have no evidence to establish a breach of the covenant, or no evidence on the matter of the Hurds, and for that reason I move to dismiss as to 26,192.

The Court: The motion is overruled.

Mr. Houston: We have here Miss Grace Bush, Principal from the Gage School. I would like to put her on, a little out of turn.

The Court: Are there any other witnesses back in the room?

(No response.)

Mr. Gilligan: I make no objection to Miss Bush testifying.

The Court: Well, it is all right. Are there other witnesses back there? If so, you are supposed to step out of the room.

Are you folks witnesses?

Mrs. Rowe: I am Mrs. Rowe.

Mr. Houston: She is a defendant.

334 " Thereupon MISS GRACE BUSH was called as a witness by and on behalf of the Defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Miss Bush, please state your full name?

A. Grace Bush.

Q. You are Administrative Principal of the Gage and the Noyes Schools?

A. That is right.

Q. Will you tell us where the Gage School is located and the Noyes school is located?

A. The Gage School is on Second Street, Northwest, between U and V.

Q. Is it in front of the intersection of the dead end of Elm Street and Second?

A. That is true.

Q. And where is the Noyes School located?

A. On the corner of Tenth and Franklin Streets, Northeast.

Q. Now, going to the Gage School how long have you been at the Gage School as Administrative Principal, Miss Bush?

A. Four years, I believe.

335 Q. Will it go back to 1941?

A. Yes.

Q. How large a room, how large a school is the Gage School, so far as rooms are concerned?

A. There are twelve rooms.

Q. Twelve rooms?

A. Yes.

Q. What is the enrollment at the Gage School this year?

A. 192.

Q. 192—how many rooms do these 192 children use?

A. Seven.

Q. There are five rooms not in use?

A. Not used for other purposes; there is a nursing office, a dental clinic—

Q. I mean, there are five rooms not used for instruction purposes?

A. Not full time.

Q. Yes, and of those 192 pupils, Miss Bush, they run to what grades?

A. Sixth, and then an atypical class.

Q. Miss Bush, please tell us how many of those children come from homes west of First Street?

A. Twenty-seven.

Q. Twenty-seven?

A. Yes, if you mean west of First, not including First, not the west side of First.

336 Q. Twenty-seven, west of First Street.

A. Yes.

Q. Miss Bush, after school is out, are the grounds used as a playground by white or colored children, after school hours?

A. They are supposed to be used by white only.

Q. But as a matter of fact, what is the situation?

A. As a matter of fact, the white children were driven off by the colored in the neighborhood, so to avoid trouble we abdicated after school hours.

Q. So that as a matter of fact, the colored have now pre-empted the grounds for play purposes after school hours?

A. After school hours, yes.

Q. Is it true that most of the white—the white people live on First Street—I mean, including the west side of First—the white population is decidedly on First Street and east?

A. That is right.

Q. Are there very many colored people—sorry; strike that.

Are there very many white people west of First Street?

A. Twenty-seven of our children. I really don't know how many houses are occupied by white.

Q. Just a moment—And how long has that condition in which—well, have you had proportionately a smaller number of children at the Gage School living west of First Street for the last two or three years?

A. It has varied very little, the enrollment, that is. I have it since 1934, with the exception of one year, and 1942 it was 218; '43, 203; in '44, 189, taking the enrollment for the last one being taken in September.

Q. And that was—?

A. For 1945, 194.

Q. Now, you testified on a previous occasion, do you remember, on Adams Street?

A. Yes.

Q. You came down two or three times, I believe.

A. Yes.

Q. Do you remember what the enrollment of the children living west of First Street was then?

A. I wasn't asked that, at that time.

Q. Well, have you always had a very small percentage of school children at the Gage School living west of First Street since you have been there?

A. Well, we have a smaller percentage now.

Q. The percentage is gradually dropping since you have been there?

A. That is right.

Q. That is, of children living west of First Street?

338 A. Yes.

Cross-examination.

By Mr. Urciolo:

Q. Miss Bush, may I ask you please, is this a special school?

A. No, it is a regular elementary school.

Q. Did you or do you at any time have special classes for backward children?

A. If you mean an opportunity class, we have—no; we did at one time, yes; we had one. We now have an atypical class.

Q. The one atypical?

A. One atypical class.

Q. Is that customary in the general schools, to have an atypical class or classes?

A. These atypical classes are placed where they are most advantageous, for the purpose of helping along where needed.

Q. How many such schools are there, roughly, if you know?

A. I would not know. There are several in our division.

Q. Several in your division?

A. Yes.

Q. Were there several atypical classes in the last five years?

339 A. Yes, I think they are located in exactly the same sections now as they were then.

Q. I mean, were there more in 1942 when the Adams Street trial was on, if you recall?

A. Well, at that time we had one atypical class, where we now have one.

Q. One?

A. Yes.

Mr. Houston: One question—if you don't mind, Mr. Urciolo, before I forget it:

You bring some children to school by bus, do you not?

The Witness: No, that bus this year is used as a transfer; that is, the buses bringing crippled children there, and children for the Sightsaving class from different directions come together there and they transfer them to one bus so they are not our children using that bus.

Mr. Houston: The point is that they are not included in the enrollment, that is what I meant.

I happened to live near there, and have seen the bus while driving by.

By Mr. Urciolo:

Q. Miss Bush, you have so-called colored people to the east, west, north and south of the school; is that correct?

340 A. Not entirely. There is a store directly in front of the building, operated by white people.

Q. A store directly in front of the building?

A. Yes.

Q. Anything else?

A. The corner grocery store. Then, we have children in our building from Flagler Street, which is the street on the west side of the building.

Q. Well, then, Miss Bush, are most of the children, these 27 out of 192 who live west of First Street, are they the children mostly of parents who have businesses in the neighborhood?

A. To my knowledge, that is the only one—to my knowledge, the store is the only one business in the neighborhood, and those children do not attend our school, now they have finished the elementary school.

Q. You didn't understand me, I don't think.

Perhaps I did not make myself clear enough, rather.

My question was: Those 27 children out of the 192 total enrollment, which come from houses west of First Street, are they, those 27, the children of neighborhood store workers or merchants?

A. Not to my knowledge, no.

Q. Now, did there come a time, Miss Bush, when the neighborhood became so mixed up that you were forced to make an agreement with the children, white and 341 colored children, so that they could play, so that the colored children could play in the white playground after school hours?

A. Well, before this present custodian was there, we had one who understood very well boys, and he made an agreement with the boys that they might play on the grounds when our children were not using them, after school hours, that they might play there if they would agree to report and be responsible for any damage. That agreement held until that particular custodian left. There has been no such agreement with the present custodian, nor any such co-operation.

Q. Now, Miss Bush, is that a customary thing? Does that prevail, say, at the Noyes School?

A. No, it was not. We were told that the colored were not to be allowed on our playground. They were to use their own playground around the corner; but, there was so much damage in the breaking of windows that I suggested that they be allowed to use the grounds after school hours when our children were not using them.

Q. Now that they are being allowed to use them, is there still that much damage?

A. There is quite a bit of breakage of window panes.

Q. Would you say less now, or more?

A. More.

Q. There is more now?

A. Yes.

342. Mr. Urciolo: That is all.

Mr. Houston: More under the present custodian. There was less, however, under the first custodian?

The Witness: Because of that agreement, yes.

Mr. Houston: I mean, the boys kept that agreement and they were responsible and repaired the windows, and things like that?

The Witness: They did.

Mr. Houston: For that custodian that was nice to them?

The Witness: Yes.

Further Cross-examination.

By Mr. Gilligan:

Q. I wanted to ask a question there—Those atypical children, do they all come from the immediate community?

A. What do you mean by "immediate community"?

Q. Well, from the community from which you draw the rest of your children?

A. We draw from a little larger community, because the nearest other atypical school—well, there are two others, in addition; one at the Seaton School at Second and I, I think, and at the Thompson School at Twelfth and L—so you see it would necessarily draw from a little larger area.

Q. In other words, you would not say that the children in the community which your Gage School serves are atypical children?

343 A. No, no.

Q. You spoke of 27 of these children coming from west of First Street this year. Have you the comparison with other years, those coming from west of First Street?

A. No, I have not.

Q. It is about the same?

A. Well, I have never really gone into that before.

Q. How did you happen to do it?

A. I was asked, on a summons.

Q. Asked that?

A. Yes.

Q. So that you have no comparison with other years?

A. No, I have not.

Q. Did I understand you to say that the enrollment this year was 194 or 192?

A. 194. It was 189 last year.

Q. An increase?

A. Yes.

Q. Any other white children close by the Gage School, from this particular community, could attend?

A. Not close. The closest elementary school is at Lincoln Road and Prospect, just a little this side of Florida Avenue.

Q. You don't know whether or not that is well attended?

A. No, I don't.

344 Redirect examination.

By Mr. Houston:

Q. That is at Harewood Road and T Street?

A. Lincoln Road and Prospect.

Q. Right back across—right back of North Capitol?

A. Yes, just about a half a block off North Capitol, but down by R, just north of R Street.

Q. What is that school called?

A. Emery.

Q. How many of those 27 children, Miss Bush, are atypical children?

A. Nine.

Q. Nine?

A. Yes.

Q. Now—

A. Just a minute; that was not correct. There are none of those 27. The enrollment of the atypical class is nine, but none of those 27 come from that class.

Q. That is, the 27 are in the regular grades?

A. Yes.

Mr. Gilligan: The atypical class is only nine?

The Witness: That is right.

345 (Witness excused.)

346 Thereupon Mrs. LENA A. MURRAY HODGE was called as a witness by and on behalf of the defendants and,

having been previously duly sworn, was examined further, and further testified as follows:

Direct examination:

The Court: Sit down, please. You have been sworn.

Mr. Houston: I simply would like to note that I am not calling Mrs. Hodge for the reason that I want to call her independently as my own witness.

By Mr. Urciolo:

Q. Mrs. Hodge, in your direct examination, you stated that you were of the white race.

A. I did.

Q. And that you could always tell when a person was of the white race or of the colored?

A. I think I said "I could usually tell."

347 Q. Well, then, Mrs. Hodge, you don't know, then, for sure, whether all of these plaintiffs are white or all these defendants are negroes?

A. I certainly know all my plaintiffs are white; I am sure of that.

Q. You are sure of that?

A. Certainly, I don't see why I shouldn't be.

Q. Well, may I ask you this question: Am I of the white race?

A. You are Italian, and they are classed as whites, I understand.

Q. Answer my question.

A. I would say that you are white.

Q. You would say that I am white?

A. Yes.

Q. Mr. Houston, would you stand up?

Mr. Houston: Yes (standing up).

By Mr. Urciolo:

Q. Is he of the white race?

A. No, I don't think so—sure not.

Q. You are sure that Mr. Giancola (indicating) is he of the white race?

A. He is an Italian, and of the white race.

Q. Mrs. De Rita, would you stand up?

(Mrs. De Rita arose in the court room.)

348 A. She is of the white race; she is also white.

Mr. Urciolo: Would you stand up (speaking to woman in rear of court room).

The Court: Stand up, please.

Mr. Urciolo: Is she of the white race?

The Witness: I am not sure.

By Mr. Urciolo:

Q. Now, you can either tell or cannot tell.

A. I told you that I cannot always tell.

Q. Cannot always tell?

A. I told you that.

Q. But these other people—you are certain?

A. I was certain, yes.

Mr. Urciolo: That is all, Mrs. Hodge.

Cross-examination.

By Mr. Houston:

349 Q. Mrs. Hodge, since you don't know what this lady is (indicating lady in rear of court room) at the moment, if she bought you would have no objection whatsoever?

A. Not until I found out definitely what she was.

Q. Then, although she had not—

A. What?

Q. —although she had not changed a bit in her conduct or anything, if later you heard she was a negro, you would object?

A. I certainly would.

Q. Although she would be the same one and you would not object, and on appearance you can't tell whether she is white or colored?

A. I would not object until I found out.

Q. It is the label of "negro"?

A. Not entirely, it is the color—yes, the label.

Q. It can't be the color, because you can't tell whether that lady is white or colored.

A. Yes.

Q. So it is the label?

A. Yes.

Mr. Urciolo: Mrs. Hodge, in other words, if I am labeled negro and I want to move into one of those houses you would ask that I be put out?

The Witness: I would.

Mr. Urciolo: That is all.

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350 Thereupon Mrs. VICTORIA DE RITA was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Mrs. De Rita, you testified at the deposition in Mr. Middlemiss's office?

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351 Mr. Urciolo: . . . I am reading your testimony that you gave at the deposition.

Mr. Gilligan: Suppose you designate the word "Question" so that she will understand.

Mr. Urciolo: All right.

"Q. Now, at the time you moved in down toward Second Street, on that same square, were there persons down there that looked like Negroes?

"A. No.

"Q. None down there at all?

"A. None down to 152 Bryant Street.

"Q. She said there were none down to 152 Bryant Street.

"Now, after you get to 152 they are all Colored?

"A. Yes, yes; 152 all the way to Bryant Street no Colored—

"The Interpreter (interposing): Don't get nervous.

"By Mr. Houston:

"Q. How do you know?

"A. Well, because I see when I move over there no Colored people live in the block.

352 "Q. Well, you know that you cannot always decide whether a person is Colored or not by just looking at the skin, don't you?"

"A. I cannot understand now.

"Tell me, Mrs. Giancola——"

Mr. Gilligan (interposing): Mrs. Giancola was the interpreter, sir.

The Court: Well?

Mr. Urciolo (continuing): "The Witness (after conversing in the native tongue with the Interpreter): Yes, yes.

"The Interpreter: She said 'Yes'; she said she can tell.

"By Mr. Houston:

"You can always tell?

"A. Sure."

By Mr. Urciolo:

Q. Now, Mrs. De Rita, are you white?

A. Yes.

Q. Am I white?

A. Yes.

Q. Is Mr. Houston white?

A. No.

Q. He is not white?

A. No.

Q. Is Mr. Marchegiani white?

A. Yes.

353 Q. Is that lady in the black hat (indicating lady in rear of room) white?

A. I don't know, I can't tell you 'cause I don't know.

Q. Therefore, do you retract the statement that you made in your deposition that you can always tell? In other words, sometimes you can be mistaken.

A. Might be.

Mr. Urciolo: That is all.

Cross-examination.

By Mr. Houston:

Q. Mrs. De Rita, since you can't tell what that lady is, you would have no objection to her moving in the block?

A. No.

Q. But suppose you found out later that, somebody said she didn't say it, but somebody said she was colored, would you then object?

A. No.

Q. So that if she doesn't look like colored, you wouldn't mind; is that right?

A. No, I mind, too.

354-357 Q. Well, I said you can't tell what that lady is, whether she is white or colored; is that right?

A. That is right.

Q. Now, since you can't tell whether she is white or colored, you would have no objection to her moving in the block, would you?

A. I don't know what you mean; I can't understand that.

358 Mr. Gilligan: Maybe Mr. Urciolo himself could interpret.

Mr. Urciolo: In that event, I will be satisfied.

The Court. All right. You will be sworn as an interpreter.

Mr. Urciolo: I have been sworn already.

Mr. Houston: You take another oath as interpreter.

359 The Clerk: If Your Honor please, I do not seem to have the interpreter's oath here.

The Court: Perhaps I can give it to Mr. Urciolo.

Do you solemnly swear that you will correctly interpret all questions propounded to this witness and correctly interpret her answers thereto, so help you God?

Mr. Urciolo: I do.

Mr. Houston: Sit there, and let's make sure no advantage is taken of the witness.

May I go back over my examination?

The Court: We have not had any trouble as to that.

(Whereupon, the witness was asked the following questions which were interpreted to her by Mr. Urciolo, in Italian, and her answers in Italian were, in turn, translated into English by Mr. Urciolo, as follows:)

Mr. Houston: Since you could not go up to the lady and ask her whether she is white or colored, would you then

have any objections to her moving in the block since you can't tell whether she is white or colored?

Mr. Urciolo: No.

The witness says no.

By Mr. Houston:

Q. Then, your objection is not to the color of the person but to the fact that the person is labeled "negro"?

The Court: Do you understand that?

360 The Witness: No.

Mr. Urciolo translates question.

The Witness: What do you mean there, you explain it?

By Mr. Houston:

Q. Mr. Urciolo will.

A. That is right.

Mr. Houston: That is all.

The Court: Any questions?

Mr. Gilligan: I would like to ask just one question.

The Court: All right.

Further cross-examination.

By Mr. Gilligan:

Q. This lady back here (indicating), if she moved into your block where there are covenants, because you do not know whether she is white or black, after she moves in, if you learn that she is a negro, would you then object to her presence in your block?

A. (Interpreted:) No.

Q. You would not object?

Mr. Gilligan: All right.

Mr. Houston: That is all.

Mr. Gilligan: You are sure you understood the question?

The Witness: Well, you might please tell again.

Mr. Gilligan: Make sure of the point, now; have you got it, Mr. Urciolo?

361 Mr. Urciolo: You can repeat it if you wish. There are others that understand in the room. Do you want to repeat it so that there won't be any question?

(Mr. Urciolo then translated the question of counsel to the witness.)

The Witness: Yes.

Mr. Gilligan: That is all.

Mr. Houston: Wait a minute, he raised a question.

The Court: Wait a minute. What is the difference?

Go ahead with the questions, Mr. Houston.

Further cross-examination.

By Mr. Houston:

Q. How would the lady have changed, in what manner would the lady have changed which would make her objectionable after you had, to your satisfaction, found her to be a negro, from what she was before you found her out to be a negro?

A. (Through Mr. Urciolo:) In the sense that she wants that block all white.

Q. So that it is the label "negro" that you object to?

A. (Translated:) A little of everything.

Q. What does she mean by "A little of everything"?

A. (Interpreted:) She said because they are colored, face is colored, and because they have black blood.

Q. I thought you just said you couldn't tell what they were, whether white or colored.

362 The Court: You have assumed that she later found it, have you not?

Mr. Houston: That is why I raise the question of face.

Mr. Gilligan: If Your Honor please, she said "A little of everything".

Mr. Houston: That is right, don't forget where it came from. In what respect has the lady changed?

Mr. Gilligan: Ask her that.

Mr. Houston: We have asked her that.

The Court: Find out.

(Question interpreted by Mr. Urciolo.)

The Witness (Interpreted): Because before I don't know. After I find out I am sure negro.

Mr. Urciolo: She said before she found out she was not certain, and after she found out she is sure she is colored.

Mr. Houston: That is all.

(Witness stands aside.)

363 Thereupon MARY M. MARCHEGIANI was called as a witness by and on behalf of the Defendants, and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Mrs. Marchegiani, can you always tell whether a man is white or colored?

A. No.

Q. You cannot?

A. Maybe some cases, where I could be mistaken.

Q. In other words, you may be mistaken in your complaint that you filed?

A. Well, so far as the case goes, right now I am not; far as I am concerned, Mr. Hurd admitted in a letter that he was colored, he signed the letter.

Q. Mrs. Marchegiani, if I admitted in a letter to you that I was colored, would you think I was?

A. Would you admit being a negro if you wasn't?

Q. Answer my question.

A. Repeat the question.

Q. My question was—If I admitted to you in a
364 letter that I was colored, would you then label me as colored?

A. Yes, I would.

Q. In other words, all a person has to do is write a letter and state that he is white or colored and that makes him whatever he states?

A. Sure, he states it.

Q. If Mr. Houston writes a letter that he is white, would you then say he is white?

A. Until I seen him.

Q. Then any case, you would want to see him?

A. Of course, I would have to see for myself. We saw that Mr. Hurd was colored.

Q. I see. All right. Is this man colored in the first row here (indicating)?

A. I would say he was colored, yes.

Q. Is this man colored (indicating)?

A. No.

Q. He is white?

A. He is white.

Mr. Houston: Referring to whom?

Mr. Urciolo: That gentleman (indicating).

The Witness: He is white.

By Mr. Urciolo:

Q. The gentleman with the eyeglasses?

A. He is white—Mr. Hodge.

365 Q. This lady in the brown dress (indicating)?

A. I say she is colored.

Q. This lady with beads (indicating)?

A. If you please, I would like to have her take her hat off and come so I can look close.

The Court: Come up here.

The Witness: After all, she is quite far.

The Court: Come up here, please. Come around to the side here (indicating).

(Unidentified woman from back of courtroom approaches and stands by side of witness chair.)

The Witness: I would say she would almost pass for colored.

By Mr. Urciolo:

Q. What is she, white or colored?

A. She could be mixed.

Q. If she is mixed, what is she?

Mr. Gilligan: That is a legal question, if Your Honor please. "If she is mixed, what is she?"

Mr. Urciolo: I think that does not call for a legal conclusion at all.

The Court: Sustained.

Mr. Urciolo: Sustained?

The Court: Yes.

366 By Mr. Urciolo:

Q. Did I understand you to say she was part colored?

A. I said she could pass for part.

Q. Part what?

A. Colored or white.

Q. Pass for white or colored—

A. To me her hair indicates that she has colored blood in her.

Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Houston:

Q. What would you do if a woman who passed for white or colored moved into the block, and that is all you know, would you go up to her and ask what she was?

A. No, not until I had a little more chance to see her husband, whether he was lighter or darker, or her children, they usually are the same color.

Q. Suppose her husband was light?

A. Someway or other, it always shows up, their social-ability with their friends.

Q. I see.

A. And part of it—

Q. The point of it is, the friends now, is it the friends you object to, or what?

367 A. No; I mean it would indicate sooner or later, if they are colored or white.

Q. Do you know that there are plenty of negroes that have whites visiting them; don't you?

A. No.

Q. You don't know that?

A. I know that they usually stick among themselves when it comes to friendships.

Q. You know plenty of negroes have whites visiting them?

A. Yes, probably so, but not all white.

Q. What do you mean, "not all white"?

A. For instance, if—

Mr. Gilligan: I don't see the relevancy of the question, ut I have to object to it.

The Court: Let us hear the answer.

The Witness: If the woman is colored, or if she is one that is all white as to skin, she would have some colored friends.

By Mr. Houston:

Q. But the point is, to a lady like that, you wouldn't raise any objection to her going into the block, first?

A. Not until I was definite, no.

Mr. Houston: All right.

368 Redirect examination.

By Mr. Urciolo:

Q. Mrs. Marchegiani, what would you do, say, if Mr. Marchegiani was a widower, and married a very dark woman?

A. If Mr. Marchegiani became a widower, I would not be here to tell it.

Q. Sorry. I meant Mr. Giancola.

A. What was that again?

Q. Mr. Giancola.

A. State the question.

Q. If he married a very dark woman who seemed to be a colored woman, let's suppose he married a woman who had some colored or negro blood in her, would you object and ask that they both move or just one?

A. Well, I wouldn't know, because, after all, I never come across a case like that.

Q. What would you do?

A. I don't know what I would do, and that is my answer.

Mr. Urciolo: No further questions.

Mr. Griligan: No questions whatever.

369 Thereupon BALDUINO GIANCOLA was called as a witness by and on behalf of the Defendants, and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. In this case, if you don't understand a question, just say you don't understand, and we will see that you know, that the matter is interpreted. Mr. Urciolo has been sworn as an interpreter.

A. All right.

Q. How many persons have moved in this neighborhood since you first bought in the 20 houses that are under covenant?

A. I don't know.

Q. Can you give us any idea?

A. Three, I know.

Q. All right; who are those three?

A. I don't know the name of them.

Q. Are they Italians, Assyrians, or what?

A. Colored.

Q. What?

A. Colored.

Q. I mean, outside of colored.

370 A. I don't know.

Q. Since you first bought on Adams Street—on Bryant Street, how many persons, except colored persons, have moved into the 20 houses?

A. Three, I think.

Q. Who are they?

A. I just tell you I don't know the name of them.

Q. Where did they move in?

A. (Nodding head.)

Mr. Houston: I don't think he quite understands.

The Witness: Yes, I do; I don't know the address, I understand.

The Court: He understands the question, but doesn't know the address.

By Mr. Houston:

Q. You understand I am not talking about colored, I am talking about others than colored—how many persons other than colored moved in to any of the 20 houses on Bryant Street since you bought?

A. I don't know how many there move in.

Q. Do the colored people keep up their houses nicely?

A. Yes.

Q. Do more colored children play around in the neighborhood now than they did when you first went there?

A. Yes.

371 Q. Has Adams Street in back of you become almost solidly colored since you moved there?

A. Think it is.

Q. Now, what did you say you paid for your house?

A. 45.

Q. How many children do you have, Mr. Giancola?

A. No children.

Q. How many persons do you visit in the neighborhood?

A. Mr. and Mrs. Hodge.

Q. What?

A. Mr. Hodge, DeRita, when Marchegiani was there.

Q. All right. Do you visit any of the new persons who have come in there?

The Court: You will have to say yes or no.

The Witness: No.

By Mr. Houston:

Q. You don't even know who the new persons are that have come in?

A. No, sir.

Mr. Houston: All right, as far as I am concerned. That is all I want to ask Mr. Giancola.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Giancola, you don't know who has moved into the block in the last year?

372. A. Three, that is all I know.

Q. Just three people?

A. Moved.

Q. Have you seen them?

A. I see them outside, a couple of them, that is all I know.

Q. Did they look light or dark.

A. Dark.

Q. Are they, in your opinion, white or colored?

A. Colored.

Q. Let me ask you this question—I am referring to the three persons other than colored people that you stated moved into the block, and you say they look colored.

A. Yes, these colored.

Mr. Urciolo: He evidently does not understand.

Mr. Gilligan: He is puzzling him with that last "other than the three colored persons". You have referred to

three others that moved into the block and there wasn't any such testimony.

Mr. Houston: Beg pardon?

The Court: Can you answer the question?

Mr. Gilligan: Ask that again.

By Mr. Urciolo:

Q. I ask you this question: Besides the colored people who have moved in, in the last two years, have there
373 been any other new occupants, owners or tenants, that moved into your block, that were not there before?

A. Yes.

Q. Now, that was my question—how many more or less?

A. Oh, might be two or three, something like that.

Q. Now, I asked you did they look very light or dark?

A. Well, they look white.

Q. Answer my question.

Mr. Gilligan: He did.

Mr. Urciolo: The question is, did they look light or dark?

The Court: The answer was, they looked white.

Mr. Urciolo: No, Your Honor.

Mr. Reporter, read the answer. I said, Did they look light or dark?

The Witness: White.

(Whereupon, the record was read by the reporter.)

(Witness excused.)

374 Thereupon CONSTANTINO MARCHEGIANI was called as a witness by and on behalf of the Defendants, and having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Marchegiani, I was talking to you about your new house at the time we cut off. Going back to that, what are the dimensions of your lot?

A. New house?

Q. Yes.

A. That is 50 by 199 on one side, and 181 on the other—

Mr. Gilligan: I object to any further questions about his new house because that is not in this case at all.

The Court: Sustained.

Mr. Houston: Do you wish to hear me?

I understood that it was 50 by 199 and 50 by 181.

Mr. Gilligan: Do you overrule my objection?

The Court: Sustained.

Mr. Houston: I asked if you wanted to hear me, and I thought you said no.

The Court: I do not care to hear you, because I do not see the relevancy of it.

375. Mr. Houston: That is what I wanted to find out.

Part of my case is against that showing—showing a change of neighborhood, showing him leaving the house that was old, the obsolescence of the property, and getting a new property.

Mr. Gilligan: Why not ask him about the obsolescence?

The Court: Very well, the objection is sustained.

Mr. Houston: Your Honor, I want to lay that foundation. Can I not ask him whether he would move back into the Bryant Street property?

The Court: The objection is sustained.

Mr. Houston: All right. Now, I say that that is important because I want to find out about his desire for the enforcement of the covenant and as to whether he moved because he wanted to get a better house or whether he moved for further reasons.

Is the objection still sustained?

The Court: Still sustained.

By Mr. Houston:

Q. Mr. Marchegiani, how many persons have moved into the neighborhood of the 20 houses on Bryant Street from the time you first bought?

A. Please repeat it.

Q. How many persons moved into Bryant Street, in these 20 houses, from the time you first bought until you moved away?

376

A. I am afraid I can't answer you that, because I can't check on it because I am working in the day and nightly—I can't see, naturally, who moves in or moves out.

Q. You pay no attention to your neighbors?

A. That is right.

Q. You did not pay any attention to your neighbors?

A. That is right.

Mr. Houston: I get the answer as "No, you do not". Is that right?

The Witness: That is right.

Mr. Houston: That is all I want to ask of the witness.

Cross-examination.

By Mr. Urciolo:

Mr. Marchegiani, you never bothered about seeing who moved in and who moved out?

A. That is correct.

Q. Well, tell me how did you know that colored people had moved in?

A. Well, I knew through my wife.

Q. You took her word for it?

A. That is right.

Q. Consequently, as of your personal knowledge you don't know whether they are white or colored?

A. Well, I never seen it. Of course, I can state nothing, you know what I mean, I never seen the person, any of the wives or husbands.

377 Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Gilligan:

Q. When you moved from your house on Bryant Street out into Maryland, did you do it because these negro families moved into Bryant Street?

Mr. Urciolo: That is objected to.

The Court: Objection sustained.

Mr. Gilligan: No further questions.

Thereupon PASQUALE DeRITA was called as a witness by and on behalf of the Defendants, and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. You have been on Bryant Street now since 1940?

A. 1940, yes.

378 Q. How many persons have moved in, other than
negroes, on Bryant Street, in the 20 houses, since
you moved in?

The Court: All right, you (indicating Mr. Urciolo) interpret the questions and answers.

Mr. Urciolo (interpreting): Two other families?

The Witness: No, one, buy the house, I don't know the name, see?

Mr. Urciolo: One buys the house.

The Witness: I don't know the name, but last two years I don't know that, the man that buy the house there, white people.

379 (Mr. Urciolo addressed the witness in Italian.)

The Witness (through Mr. Urciolo): I don't know, I work, come back at nighttime. When I come back I can't see who move in or who live there. I come back nighttime when I work.

The Court: He has done more than answer the question now, certainly. He said one, as I understand it.

What is the next question?

Mr. Houston: When he goes to work and comes back at nighttime, he does not pay any attention to who lives or who does not live around him?

By Mr. Houston:

Q. You didn't pay any attention to who is in the neighborhood, you paid no attention to who was in the neighborhood?

(Question translated by Mr. Urciolo.)

A. I don't know, I come back when dark.

The Court: Any questions?
Mr. Urciolo: I have one question.

Cross-examination.

By Mr. Urciolo:

Q. You didn't see colored people move in, yourself?

A. I know—I no see when they leave, I see they live there, I work, they move daytime, daytime I am going work myself, I work on other side, see. Daytime I work.

380 Mr. Urciolo: He said, Your Honor, that he did not see them when they moved in because they moved in during the daytime when he was at work.

By Mr. Urciolo:

Q. Did you see all three families, all four families, before you filed this suit?

Mr. Urciolo: I will interpret that for him.

(Question translated by Mr. Urciolo.)

A. (through Mr. Urciolo:) He said the only one he saw only colored family he saw before signing the complaint was in 116 Bryant Street.

Mr. Urciolo: I have no further questions.

Mr. Gilligan: No questions.

381 Thereupon LENA A. MURRAY HODGE was called as a witness by and on behalf of the Defendants, and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mrs. Hodge, there was some question about the signing of the papers in the suit, in these suits, and my understanding is that the first suit is the suit that was brought against Hurd and everyone was at your house when Mr. Keefer — and then you said you signed this in a group?

A. Yes, sir.

382 Q. In the second suit, the suit brought against the
Rowes and Stewarts and Savages—

A. Yes.

Q. In that case—

Mr. Gilligan (interposing): At that time, I had to be out
of town and turned the papers over to you.

The Witness: Yes, sir.

By Mr. Houston:

Q. To get the signatures?

A. Yes.

Q. Will you state what you told—state first to whom
did you go to get signatures?

A. Well, I went to Mrs. Giancola; and Mrs. DeRita, and
Mr. DeRita, and Mrs. Luskey, Mr. Luskey, and Mr. and Mrs.
Marchegiani, of course, were not in the city, and I talked
to them on the telephone.

Q. In the case of the Marchegianis, the one took the
papers out to the other?

A. Mr. Marchegiani came in the evening, from the office,
from his work, and he took the papers out and Mrs. Marche-
giani signed it and he returned it to me the following morn-
ing.

Q. Will you state to the Court what you said to these
people, especially these new Italian people when you came to
them to present it to them to get them to sign it?

383 A. I presented it to them, in this case, these people
had bought these houses, and told them that this
was an injunction,—yes, an injunction, an injunction
to prohibit them from moving in until this case was settled.

Q. Did you tell them that you were doing this for their
benefit?

A. I did.

Q. Did you say to them, "Now—"

Mr. Urciolo (interposing): If Your Honor please, I wish
Mr. Houston to ask the witness who "them" is.

By Mr. Houston:

Q. Whom did you say, "I am doing this for your benefit"
to?

A. Different ones I was talking to, when I was in their
homes, not Mrs. Luskey, not Mrs. Marchegiani,—Mrs.

Giancola, and he was out when I was there in the afternoon, and Mr. and Mrs. DeRita, I made it plain to them, Mr. Houston.

Q. That you were doing that for their benefit?

A. I did.

Q. Was Mr. DeRita there at first, or did you have to go back?

A. I went over to see Mrs. DeRita.

Q. Then there is Mr. DeRita, and Mr. Giancola and Mrs. DeRita?

A. And Mr. Luskey and Mrs. Luskey.

Q. Now, how old is Mr. Luskey?

384 A. 75, I think, Mr. Houston.

Q. And I understand that Miss Helen Skinner—

A. Miss Helen Skinner, 132.

Q. How old is she?

A. I would say she is up in her 70's, around approximately there.

Q. Mr. Skinner, next?

A. Well, he is older than his sister, I think.

Q. Is it "Miss"?

A. Miss Helen Skinner and Mr. Melvin Gibbs Skinner.

Q. He is older than his sister?

A. Yes, he is.

Q. And Mrs. Pyles, how old is she?

A. That I can't answer; I would say that she is a woman, well, probably 68 years old.

Q. She is the lady who is blind?

A. Yes, she is blind.

Q. And Mr. Wrightsman?

A. Mr. Wrightsman is about 81.

Q. Now, do any of the second generation of the original families live on the block except the Lanigan girl?

A. No, they do not.

Wait a minute, Mr. Houston, Mrs. Johnson lives at 114, she is a co-owner with her daughter, but her daughter lives with her.

385 Q. Was she an original owner?

A. For a good many years, I don't know who the original owners were, but Mrs. Johnson has lived there, well, for, I would say, 18 or 20 years.

Q. But not before then?

A. Not that I know of.

Q. So that so far as you actually know, and can identify

the original owners, no second generation of the original owning families lives on the block except Miss Lanigan, is that right?

A. That is all.

Q. Now, how many persons other than negroes have moved into the block in the last five years, would you say?

A. Well, Mrs. Johnson and her daughter and husband, Mr. and Mrs. Delavigne have moved in, well, since Mr. Hurd moved into that house. They were away and then they came back, went back into their house, and Mr.——

Q. Has Mrs. Lanigan moved back yet?

A. She never has left.

Mr. Gilligan: She hasn't finished.

The Witness: No, I have not.

Mr. Houston: Excuse me.

The Witness (continuing): Mr. and Mrs. James Seigh, they are Assyrians, they are next door to me at 138.

386 By Mr. Houston:

Q. All right.

A. And there is a Mr. and Mrs. Dunn who moved from Adams Street over there about three years ago, at 140.

Q. Do you mean they moved from 140 Adams?

A. I don't know what their number was there, they have moved.

Q. Into 140?

A. Into 140 Bryant.

Q. Owners or renters?

A. Renters; that is, Mrs. Pyles' home; and then there is Mr. Perdue, now what is his first name. I don't know—It is P-e-r-d-u-e.

Q. Renter or owner?

A. Owner.

Q. Do you know where he lives?

A. At 146, just this side of the Luskeys.

Q. All right, any more?

A. No, sir. Oh, wait a minute; there is a family at 152, and their name is Amoia, I think.

Q. Are they Italians?

A. Yes, they are Italians, they have been there about two years, I think, two and a half.

Q. Mr. and Mrs. Amoia at 152?

A. Yes.

387 Q. Bryant Street, and they are—do you know whether they are renters or owners?

A. Renters.

Q. Mr. Perdue, do you know when he moved in?

A. I think possibly two years, I don't think he has been there any longer, not much, at any rate.

393 Q. Mrs. Hodge, in your knowledge — — — neighborhood, from your knowledge of the houses, types of houses from North Capitol Street west, from Rhode Island Avenue north, over about as far as Second, you are generally familiar—

The Court: Do you have a map?

(Map passed to Court.)

394 By Mr. Honston:

(Continuing:) Repeating, Mrs. Hodge, you are familiar with the houses, types of houses from North Capitol Street west, Rhode Island Avenue north, up to the filtration plant?

A. Rhode Island Avenue north, toward me?

Q. That is right, up to the filtration plant and west as far as, let us say, Fourth Street. Those are all generally speaking what you might call houses of, say, from six to eight or nine rooms, would you not say?

A. Yes, I think they are, most of them.

Q. And at the time that white people were living in them, on the whole again, they were occupied by what you might call, so far as income is concerned, a lower middle class income group.

A. Well, I think for the greater part of them, they were.

Q. Now, getting—

A. (Interposing:) Of course, the majority were.

Q. Getting down to specifically Bryant Street, all of the houses on Bryant Street between First and Second, those under covenant, those not under covenant, are the small house, say from six to eight rooms, in general?

A. Yes, they are.

Q. And during the time that white persons were living

395 on Bryant Street from First to Second, both in the houses under covenant and in the houses not under covenant, they were of the lower middle class income group, were they not?

A. Well, yes, I think the most of them were, Mr. Houston.

Q. Now, of course, you understand that there is no idea of putting it on a personal basis of money, but I am striving to establish a bracket.

A. As to practically their income there.

Q. An income bracket?

A. Well, they were about—well—lower to a medium, I would say, income bracket in those houses there, so far as I can know about them:

Q. Would you say then that the average is about lower or lower medium or medium income group bracket?

A. Yes.

Q. Would you say that the financial limit of the bracket say would be somewhere between \$1500 on the bottom and about \$5000 on the top?

A. Yes, I think that would be just about right, approximately \$1200, Mr. Houston, for the bottom, would be better.

Q. \$1200 as to the bottom?

A. Yes.

Q. And \$5000 top?

A. Yes.

Q. That would be the household income, including all members of the family?

A. Yes, it is.

396 Q. So far as you know, has there been any decline in the rents in the covenanted houses since persons supposed to be of negro blood, or negroes, moved in?

A. Well, let me see—I can't answer that; only in one or two instances where I really know.

Q. All right.

A. But, I know of two houses that, well, have rented for \$48, I think, and one for about \$42.

Q. Which house was that, Mrs. Hodge?

A. The one right next to me that Mr. Savage occupies,

134.

Q. 134? I don't think you understood the question. I was not asking what the rents were, I was asking whether you knew of any reduction in rents.

A. No, I do not, because I don't know what they rented for.

Q. Has there been any increase in rents?

A. That I can't tell you because I don't know.

Q. Do you know—you said you knew what the rents were on two houses,—134, the Savage house, is renting for what?

A. I think that was \$47.50 or \$48, along there. I can't be specific, but I know it was under \$50.

Q. And the other house?

A. I think the other one is 132, I think that is around in the same bracket. Those are the only two that I
397 am really sure of.

Q. And by "bracket" you mean under \$50 as a top?

A. Yes, under \$50.

Q. And when were those brackets enforced?

A. What?

Q. How late, to your information, were those rentals enforced?

A. Well, they had been—134, practically,—I mean 32, practically always paid that, and after Mr. McCurdy sold 134, I think that rent has remained just about the same. He has been gone I guess about five or six years, something like that.

Q. Then Mrs. Hodge, if you made the statement in the complaint, and swore to it, that the occupancy by negroes would be absolutely ruinous to the real estate owned by the plaintiffs, you were not referring to market values or marketability, were you?

A. In a way, yes; because I feel, my house would not be worth as much as it is now if it all went in, colored people went in there, and I think that would depreciate the value of all of them.

Q. Now, why do you say that?

A. I think, Mr. Houston, in a majority of the cases their homes are not kept up as well; the majority, understand, I am saying,—as possibly my house is, and naturally, if
398 homes are not kept up, I would say the market value would go down and, of course, if that went down, mine naturally would have to go down, I would think.

Q. Now, have you any evidence that the homes the negroes are now occupying are not as well kept up as they are by the white persons?

A. No, I have not.

Q. Are you basing your statement on fact, or basing it on your feeling about the matter?

A. Well, I am basing it not only on my street, but the general neighborhood there. What I mean is possibly beyond Fourth Street around through in there.

Q. Beyond Fourth Street?

A. No, between my place and Fourth, I know what the condition of those houses has been.

Q. Let's take the houses over on Adams Street, where the negroes first moved in,—on porches,—remember that, between the Flagler Place and Second?

A. Right back of me, you mean?

Q. Well—

A. (Interposing:) It is not right back of me. They are the only ones that have porches.

399 (A map just identified at the bench, was marked "Defendants' Exhibit No. 2" and received in evidence.)

Mr. Gilligan: I think it might be well, if your Honor don't mind, to let Mrs. Hodge come around.

(Witness Mrs. Hodge approached the bench.)

Mr. Houston: If it please the Court, I ask that this map which has a listing at the top "Howard University" in the upper left-hand corner, "Reservoir grounds" in the upper right-hand corner, be marked as Defendants' Exhibit No. 2.

This was used about two or three years ago in another case involving, at the time, Adams Street in the 100 block, in which I was counsel for the defendants, Mr. Gilligan was counsel for the plaintiffs, and at that time we marked it with a legend which appears at the bottom of the map, and it is as follows—the spaces indicated in brown represent negro occupancy, the spaces represented by a sort of vermillion represented covenanted occupancy—

The Court: Perpetual?

Mr. Houston. Perpetually, covenanted houses. The spaces marked in brown, Your Honor, are spaces occupied by negroes, without covenant.

The Court: No covenant?

Mr. Houston: Yes, sir, the spaces occupied in ver-
400 million represent houses occupied by negroes or
others on which there is a covenant and on Adams
Street is represented, you see, these houses (indicating)
which at that time were in litigation, then the houses in
green are white houses on which there is a perpetual cove-
nant. At that time we were engaged in the matter, that
is—

The Court: Wait a minute. There is a perpetual—

Mr. Houston: That is, houses occupied by whites on
which there is a perpetual covenant. Here are the green
houses on Bryant Street which are now the subject of this
suit; this is going north toward the reservoir (indicating);
this is south toward Rhode Island Avenue; then, I think
this last in yellow (indicating)—

The Court: White, without any covenant?

Mr. Houston: I see very few of those, and this is the
school, incidentally, that we were talking about (indicat-
ing) the Gage School.

Mr. Gilligan: It looks to be brown.

Mr. Houston: No, that is incorrect, they may have made
it for that, it was meant for yellow.

Mr. Gilligan: At any rate, that is the Gage School for
white children.

Mr. Houston: For white children, yes.

Now, going back, Mrs. Hodge—

401 The Court: You were asking about Adams Street?

Mr. Houston: Oh, yes, I remember now.

By Mr. Houston:

Q. These houses here (indicating) on Adams Street
are occupied by negroes, without any covenant. These
houses were the ones with the white porches, do you re-
member them?

A. Yes, wait a minute, that is—

Q. Adams Street.

A. Yes, I remember them now.

Q. Would you say that these houses are not kept up
just as well as any house?

A. Mr. Houston, I can't say because I tell you I have
very, very seldom gone back there. I cannot answer
that, truthfully.

Q. Now, Mrs. Hodge, these houses down here (indicat-

ing) where the negroes are, down toward Second, are they not kept up as well?

A. No, not at all.

Q. Are some kept up as well as the white houses?

A. Yes, some of them are.

Q. Now, wouldn't you say that—would you be willing to say that there is no negro house which is worse than the worst white house along there?

A. I would frankly say there is not. I am telling the truth about that, there is not.

Mr. Gilligan: Aren't you telling the truth about everything?

The Witness: Oh, yes.

Mr. Houston: She means what is favorable and unfavorable,—I understand.

By Mr. Houston:

Q. So that, Mrs. Hodge, if you got a desirable respectable type of negro in that block of houses, so far as marketability and taking care of his property is concerned,—no, there is no more reason to think that he would not take care of his property than the same self-respecting white person.

A. I presume not.

Q. So that in saying they would not take care of their property, I mean to say that that doesn't necessarily follow, I mean, as a result.

A. No, not as a rule; I think generally it does, though.

Q. Take Mr. Hurd's house at 116. You have passed it, have you not?

A. Yes.

Q. Is the Hurd house being kept up as well?

A. It is, it is being kept up very nicely.

(At this point counsel and the witness left the bench and resumed their seats at the counsel table.)

403 By Mr. Houston:

Q. The way that the Hurd house is being kept up, it certainly would not cause your house to depreciate on account of the appearance of the houses in the neighborhood, would it?

A. No, not so far as appearances are concerned.

Q. Now, when we are talking about marketability, I am speaking of the price that you could get for your property, and I mean that price regardless as to who it comes from, colored or white.

Now, on that basis, would you say that negroes going into the block would be absolutely ruinous to your property from the standpoint not now of occupancy, but of sale?

A. Well, I think it would to a certain extent.

Q. Have you anything upon which you can make or show the reasons for that statement?

A. No, that is just my own idea, Mr. Houston.

Q. Now, speaking again from the standpoint of your personal feelings about residence, speaking once again from a standpoint of marketability and values, it is just your own idea again that negroes coming in would be injurious and depreciative of the values of the house, your house, the market value?

A. Yes, I think it would.

Q. Do you have any more on which to base that
404 conclusion than you had as regards the sales value?

A. No, I have not.

Q. Now, you testified that you had had no trouble whatsoever with the negroes on the block, either in the covenanted houses or in the houses not under covenant.

A. No, not a bit, I did testify that.

Q. Now, your peace of mind has not been disturbed by the presence of the negroes in the houses not covenanted?

A. No, it has not.

Q. And you stayed on in your house after the white people moved out of the houses not covenanted and the negroes moved in, and you have not been disturbed in mind?

A. No, I have not.

Q. Now, in view of the fact that you have not been disturbed by the presence of negroes in houses 154 on down, can you state what is it that makes you disturbed so far as the Hurd occupancy is concerned?

A. Well, Mr. Houston, I feel that way—as far as the colored coming in, I have nothing against them having their home, but it does, in a way, take away from the—well, you might say the sociability of the white people in the white people in the neighborhood, that is, in our block. That is the only reason that I can give.

Q. All right. How many young children are there in

the block, in the white families, as far as you know,
405 Mrs. Hodge?

A. Let's see, there is one—

Q. Let's go by houses—114?

A. 114.

Q. That is the Johnson's?

A. There is one boy about seven years old, I think,
six or seven, possibly six, I'd better say six.

By Mr. Houston:

Q. 116 is the Hurd house?

A. Yes.

Q. 118 is now the Rowe house?

406 A. Yes.

Q. 120?

A. No small children there.

Q. 122?

A. No.

Q. 124?

A. Let's see, that is the Marchegiani's house and there
is a little girl there, possibly five years old, as near as I can
guess.

Q. 126?

A. Mr. Houston, Mr. Pearson's son and a daughter, I
don't know whether they live there or not, but there are two
children there the best part of the time, but whether or not
they live there, I can't say.

Q. How old are they?

A. Well, about seven and eight, I think, I would judge.

Q. They are the grandchildren?

A. Grandchildren of Mr. Pearson.

Q. 128?

A. 128, that is the DeRita house, they have a girl about
nine.

Q. 130?

A. No children there.

Q. 132?

A. No children.

407 Q. 134—let's see, that is the Savage house. 136?

A. No children.

Q. 138?

A. A little boy, about five and a half.

Q. Whose house is that?

A. That is Mr. James Seigh.

Q. Do you happen to know how he spells that?

A. S-e-i-g-h, that is an Assyrian.

Q. And 140?

A. Well, there are girls in there, around 15, 16 or so, I think, high school girls.

Q. How many, do you know?

A. Two.

Q. Whose house is that?

A. That is where Mr. and Mrs. Dunn live.

Now wait, there is a daughter there that has recently come, she has a baby about four months old.

Q. That is at the Dunn's house?

A. Yes.

Q. 142?

A. That is where the Windgroves live, they have a girl around 14 and a boy, I would say, around 11.

Q. Does the girl go to high school?

A. Yes, she is in high school.

408 Q. And the boy?

A. Well, —

Q. Is he in Junior Hi?

A. He is in grammar school, he is at the Gage, now.

Q. Gage?

A. Yes.

Q. All right. 144.

A. That is Perdue's home. Yes, they have a little girl six, and a boy.

Q. Mr. Urciolo tells me the Dayton's live there.

A. Oh, yes, 44, that is Dayton's house, I beg pardon.

Q. Are there any children there?

A. No, you asked me 42, didn't you?

Q. No, I had not gotten 44, but had gotten 42, there that was Windgrove.

A. They have a girl and they have a boy there.

Q. Going to Gage School?

A. A boy there around 13 or 14.

Q. Excuse me, I had already put down that 142 was the Windgrove house. There is a girl there?

A. There is a girl in high school.

Q. And a boy at the Gage school around 11?

A. Yes.

Q. Is there another boy there?

A. No.

409 Q. Now, 144?

A. No children there.

Q. 146 now?

A. That is the Perdue's house, and they have a little girl about six and this boy I would say is very close to 14.

Q. Is he in high school?

A. I can't tell you, Mr. Houston. I think he is in Junior High.

Q. 148?

A. No, no children.

Q. 150—that is Stewart. Now, 152?

A. Well, there are two children,—three there, but I don't think the older one of the boys goes to school. He is an older boy, 19, or possibly 20, and there are two girls about 16 or 15, and about 13, I would say. I am not giving it to you absolutely correct, but that is as near as I know as to what the ages are.

Q. There is a boy, nearly grown, you said?

A. The oldest one is nearly grown.

Q. Who works?

A. I would judge so.

Q. Well, who works as far as you know?

A. As far as I know.

Q. Now,—

410 A. (Interposing:) Mr. Houston, I have omitted that in the Perdue home, they have roomers there, and there are two girls, high school girls.

Q. Roomers?

A. I think it is Mrs. Perdue's sister and her two daughters.

Q. There are four children there, then?

A. Yes, but not in the Perdue family entirely.

Mr. Gilligan: If your Honor please, I would like to ask at this time whether this is part of the proof that you propose to offer in connection with public policy?

Mr. Houston: No, this is proof on change of neighborhood. I am just developing the course of the neighborhood, and it seems to me that one of the incidents of the vitality of the neighborhood is the number of children coming along in the second generation.

Mr. Gilligan: I would like to say, please, that the courts have definitely and unequivocally upheld the restrictive

covenant, regardless of whether or not there were children in the houses or older or younger people. The only thing that the courts are concerned about is,—is there a covenant has it been violated, and has there been such a change in the covenanted neighborhood as to justify it—no question as to whether there are children or older people, whether colored people have infiltrated in sufficient number to say that it would not be equity to enforce it, I think that the question is out of line for that reason, it is a subtle question.

The Court: The Court thinks it is proper, at least showing the character of the neighborhood.

Mr. Gilligan: Character?

The Court: Yes.

You may proceed (addressing Mr. Houston).

By Mr. Houston:

Q. I think we were back on the Perdue house and you told me that there were additions there, making four children.

A. Yes.

Q. That there were two high school children of the roomer, that you think—

A. I know that she is Mrs. Perdue's sister.

Q. She is identified to you as Mrs. Perdue's sister?

A. Yes, identified to me as Mrs. Perdue's sister.

Q. Now, we are back at 152, that is the Amioia's?

A. That is where I told you that the older boy—

Q. That is the Amioia's?

A. Yes.

Q. They are Italians, are they not?

A. Yes, sir.

Q. And I was down to the boy nearly grown who worked, as far as you know, and there are two more girls?

A. Where? The Amioia house?

Q. Yes.

A. Two daughters.

Q. To the best of your knowledge, are they high school girls, or grammar school girls?

A. Well—

Q. As far as you can judge. "Teen" age girls?

A. Yes, they are teen age girls.

Q. Now, that winds up, as far as you know, the white children in that particular segment of the block?

A. Yes.

Mr. Houston: I think that is all.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hodge, do you happen to know what Mr. Dayton pays, how much rent Mr. Dayton pays?

A. No, I do not, Mr. Urciolo.

Q. Mrs. Hodge, in view of what Dr. Cooper said yesterday morning, does it cast any doubt upon you as to whether some of these so-called white persons in the block with dark skins, that you may be mistaken as to whether they are exclusively of a white race, or not? I am referring particularly to the Assyrians, Mr. Amioa, Mr. Giancola—

413 A. No, it does not. I still say that they are white. It doesn't cast a bit of doubt with me but what they are white.

Q. Now, let us suppose that Mr. Amioa, Mr. Seigh, or Mr. Giancola, were to discover they had some colored blood in them.

The Court: Are you asking a hypothetical question?

Mr. Urciolo: I don't think it is hypothetical, your Honor.

The Court: You are including facts that have not been testified to, and she is not an expert.

Mr. Urciolo: Well, the point is this, your Honor: She has testified—

The Court (Interposing): I assume that you are going to ask her opinion.

Mr. Urciolo: No, I am not. She has testified that she can always tell, and we had testimony to the effect that if later on it was found out if a person moved in who seemed to be white and later on it was found out that that person was colored, then Mrs. Hodge would bring an injunction to evict those people.

Now, my question to her is—supposing you were to discover that either Mr. Seigh or Mr. Marchegiani, Mr. Amioa, anyone else with a darker complexion, you were to discover that one of those persons had colored blood.

414 Would you forthwith bring an injunction suit against Mr. Marchegiani or Mr. Amoia or Mr. Seigh?
The Witness: No, I would not.

By Mr. Urciolo:

Q. You would not?

A. No.

Q. In other words, then, the fact that any one of these now so-called white owners allege that they are white, and later you discovered that they had colored blood, you would not bring injunction proceedings against them?

A. I would not.

Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Gilligan:

Q. They were questioning whether or not these other plaintiffs were thoroughly familiar with the complaint which they signed, or whether you practically had coerced them into signing. Will you tell the Court whether or not they were familiar with them and how it came about that the second suit was brought?

415 A. Yes. They were familiar with them because when we found that other colored people had bought the houses and the tenants in the houses usually would call me, and tell me that they had gotten notices that the house was sold to colored, and, of course, when the other ones found it out they asked me what they should do and I said, "I will immediately get in touch with Mr. Gilligan and give him the facts as I have found them and ask him what the procedure should be." And he said, "Well——"

Q. (Interposing:) Who said "Well"? What did you do?

A. Mr. Gilligan——

Q. What did you do?

A. I called each one and told them, and said I could call Mr. Gilligan and whatever they wanted done, Mr. Gilligan would do, and they were all willing for Mr. Gilligan to draw the second notice, the second injunction.

Q. Did you coerce anybody into that?

A. I certainly did not.

Q. Into signing?

A. No, sir.

Mr. Urciolo: Mrs. Hodge—

Mr. Gilligan: Wait a minute.

By Mr. Gilligan:

Q. Just in order to clear up this last question that
416 was asked you, though I don't consider it very
important, presuming that the Court would grant an
injunction and require all these parties here, negroes, to
move from the block on Bryant Street, in which you have
covenants over the houses, and then you found out in some
way that one of these people who had testified already had
negro blood, would you then be interested in bringing a
proceeding against them in order to uphold the covenant?

A. Tell me that again, Mr. Gilligan.

Q. If the Court should grant an injunction requiring
all negroes in there now, to move from their houses—

A. Yes.

Q. And later on, following up Mr. Urciolo's question,
you learned that some of those people who had testified
that they were white, or who were in the houses there, were
really colored, would you be interested in beginning another
proceeding against them?

A. If they were really colored?

Q. Yes, and—

A. If I—

The Court: What do you mean, "colored"?

Mr. Gilligan: Of negro blood.

The Court: I am asking her (speaking to witness).

What do you mean when you say "colored"?

417 The Witness: I mean negroes.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hodge, these houses in question have a perpetual covenant on them?

A. Yes, sir.

Q. Now, Mrs. Hodge, in the course of time the properties
west of First Street, rather, east of First Street, will
expire, will they not?

A. Well, you mean—

Q. Twenty years or 50 years.

Mr. Gilligan: Now, he is asking for testimony that was not allowed yesterday. If you want to know, bring the books in and let's have them before us.

The Court: Sustained. / The covenants themselves will be the best evidence.

Mr. Urciolo: May I ask the question this way:

By Mr. Urciolo:

Q. Mrs. Hodge, if negroes moved in on the east side of First Street, all the way up to Channing Street, would you then be just as interested in keeping the perpetual covenant on your house as now?

A. Why, certainly I would, naturally.

418 Q. And you would want it to be kept forever, if it were a million years?

A. Why sure I would.

Mr. Gilligan: Particularly if she could live a million years.

Mr. Urciolo: One further question.

By Mr. Urciolo:

Q. Mrs. Hodge, you are an educated woman. You must have heard of Roman slaves, of which there were hundreds of thousands. Now, the testimony has been that Italians were exclusively and unequivocally of a white race—

Mr. Gilligan (Interposing): I object, if your Honor please, as to the statement as made, because that isn't true.

The Court: Sustained, just ask your question.

By Mr. Urciolo.

Q. My question is—Does the fact that there are no colored people in Italy give you some suspicion that the Italians may have some ever so slight strain of colored blood in them?

A. No, it does not.

Q. None whatsoever?

A. No.

Mr. Urciolo: Your witness.

Mr. Gilligan: That is all.

Thereupon PAULINE B. STEWART was called as a witness for and on behalf of the defendants and, having been previously duly sworn, was examined and testified as follows:

420 Direct examination.

By Mr. Houston:

Q. Mrs. Stewart, please state your full name.

A. Pauline B. Stewart.

Q. And your present address?

A. 150 Bryant Street, Northwest.

Q. Now, are you a native American?

A. Yes, I am.

Q. To the best of your knowledge, how many generations in your family go back as natives?

A. Well, I have the privilege of having lived to see four generations.

Q. Four generations that you have seen?

A. Yes.

Q. And they were all native born Americans?

A. Yes, sir.

Q. Now, Mr. Gilligan, and will you raise your voice, talk to the people in the back if you want, so we can all hear you—

A. Yes, I will.

Q. Now, how long have you been in the District of Columbia?

A. All of my life.

Q. You were born here?

A. Born, here; yes, sir.

421 Q. What do you do, now?

A. I am a feeder examiner in the Bureau of Engraving and Printing.

Q. How long have you been employed at the Bureau of Engraving and Printing?

A. Twenty five years.

Q. Now, did you buy this house at 150 Bryant Street, Northwest?

A. Yes, sir; I did.

Q. Who occupies it with you?

A. My father, my sister and her husband, and little boy.

Q. Nobody except members of the family?

A. That is all.

Q. Now, your father—was he a retired government employee?

A. Yes, he retired from the government.

Q. And your sister's husband, what does he do?

A. He is a cook in a golf club in Maryland.

Q. Your sister?

A. She doesn't work.

Q. Keeps the house?

A. Keeps house for us; yes, sir.

Q. All right. And your sister's boy, is there a child there?

422 A. She has a son there, and she also has one overseas.

Q. All right. And the son who is home—

A. 14 Years old.

Q. How old?

A. 14.

Q. And going to school?

A. In Junior High School.

Q. You say there is one overseas?

A. Stewart E. Reed, he is connected with the Anti-Aircraft Company.

Q. In the armed services?

A. Yes, he is.

Q. How long has he been in the armed services?

A. He will be in three years in April.

Q. And has he ever been overseas?

A. He will have been overseas two years in December.

Q. What theatre, Pacific or European?

A. Pacific.

Q. Anti-Aircraft?

A. Yes.

Q. Now, tell us something about your purchase of this house, where did you live previously before going to Bryant Street?

A. I lived at 2015 13th Street, Northwest.

Q. Were you rooming, or renting, or what?

423 A. No, my father was renting the house and we was evicted by the sale of the house around the 14th of March. We had been asked to leave from it, received a notice that the house was sold in November of 1945 to be released by December 1, 1945.

Q. All right, now, in December was a suit filed—

Mr. Gilligan: December as n't come yet.

Mr. Houston: When?

Mr. Gilligan: December. She said November 1945.

Mr. Houston: Obviously——

Mr. Gilligan: I thought she was to be evicted——

The Witness: 1944.

The Court: She corrects herself.

By Mr. Houston:

Q. In December, 1944, was a suit filed against your father?

A. Yes, sir; it was.

Mr. Gilligan: I object to the admission of that testimony, if your Honor please. I don't see that it has any bearing on the case, it is entirely irrelevant.

Mr. Houston: I will make my statement:

The statement is—1. I want to show the general stringency of the housing condition in the District of Columbia, particularly as affects negroes. I think that addresses itself on the balance of the equity, so far as the court

424 is concerned, exercising equitable jurisdiction. I also want to show the fact that this was a pressure move, where this family had to get shelter and that to that extent, I mean to say, it is a case of getting a house where they could get a house.

The Court: For the sake of the record, you may have your instrument marked for identification.

Mr. Houston: I am going to, just as soon as——

The Court: And then, I will rule upon the motion.

Mr. Houston: All right, sir (Producing document).

Mr. Gilligan: State what it is, what it is being marked.

Mr. Houston: If your Honor please, I am having marked as Defendants' Exhibit 3, the file from the Landlord and Tenant Branch of the Municipal Court in the case of Mabel Helen Leo, versus Paul R. Stewart, 2015 13th Street, for restitution of possession, Case No. 69,734, Landlord and Tenant Docket, filed December 9, 1944, endorsement on the paper showing judgment with a stay to March 1, 1945; a further entry marked "March 2, 1945" granting a further stay to March 9, 1945; a motion filed for a stay of execution, file stamp being dated February 21, 1945; affidavit filed by the plaintiff under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and bearing file date March 14,

1945; and, a request for a writ of restitution for possession of premises 2015 13th Street, dated the 12th day
425 of March, and signed by Charles K. Brown, who appears of record as attorney for the plaintiff.

I wish that that be introduced to show that these persons were under necessity of getting out; that they bought under pressure; and, I want it to show the general stringency of the housing conditions, both as reflected by the stays of execution here, and also what her testimony will be and other testimony will be in the case, and I bring this in as one link in the chain of evidence.

The Court: Mr. Gilligan's objection is sustained.

(The Court file referred to was marked for identification as Defendants' Exhibit 3).

The Court: That was marked for identification only?

Mr. Houston: Yes, sir. Well, your Honor considers that what I said there was a tender?

The Court: Oh, yes.

Mr. Houston: That was marked 3, for identification.

By Mr. Houston:

Q. Now, Mrs. Stewart, you said that you had had a notice that your house had been sold over your head. Did you thereafter—what did you have to do, was there a writ of restitution served on you for eviction from those premises?

A. Yes, sir; there was.

Mr. Gilligan: I still object, if your Honor please.

426 The Court: The objection is sustained. It would not have been served on her, anyhow, because she wasn't the tenant.

By Mr. Houston:

Q. Were you evicted from the house under legal process?

A. Yes, sir; I was.

Q. What did you do with your things?

A. I had to put my things in storage in order to get out of the house at the time it was designated.

Q. Now, what did you personally have to do?

A. Well, my father is 83 years of age, and there was nothing that he could do—

The Court: Just answer the question.

The Witness: I had to find some place to go and I and my father went to my aunt's house and my sister and her family went to her daughter's house, until we found some place to go.

By Mr. Houston:

Q. You are now together on Bryant Street?

A. Yes, sir, we are all together now.

Q. Who did you buy your house from?

A. R. W. Horad Real Estate Company.

Q. What did you pay for the house?

A. \$9,450.

Q. And now, when did you first see Mr. Urciolo?

427 A. I met Mr. Urciolo at the appraisal—the title company.

Q. Now, have you had any trouble with neighbors, either white or colored?

A. No, I have not.

Mr. Gilligan: You mean down here at this house?

Mr. Houston: I am talking about 150 Bryant Street.

The Witness: No, I have had no trouble.

By Mr. Houston:

Q. Now, on this issue of sociability raised by Mrs. Hodge, you have a youngster in your house, your sister's boy?

A. Yes, sir.

Q. Does he play with any of the white children on Bryant Street?

A. Well, he was playing with the two little boys next door in 152.

Q. Where did he play with them?

A. There is a little boy there about two years old that came in my house and was playing with my little boy, and they play out there on the front.

Q. Play out on the front and also in the house?

A. Yes, sir.

Q. Still play out on the front?

A. Yes, sir.

428 Q. Were you able to see in this house before you bought it?

A. No, I was not.

Q. Now, Mrs. Stewart, who lives next door to you on the right, toward First Street?

A. I understand that the folks' name is Lusky.

Q. All right. What color is your father?

A. Dark brown skin.

Q. Now, there is no doubt about him being—

A. (Interposing): No doubt about him being colored, no.

The Court: What do you mean by "colored"?

The Witness: I mean that he is a negro.

Mr. Houston: I mean—

Mr. Gilligan: She has answered it.

By Mr. Houston:

Q. So that nobody could mistake the fact, just on seeing him?

A. That is right, yes, sir.

Q. Now, again on the question of sociability, did you all see Mr. Lusky when he first moved in?

A. I saw Mr. Luskey because I had to go there to get the keys to get into my house.

Q. What was Mr. Lusky's attitude?

A. He was very nice about it, Mrs. Lusky wasn't there, and he told me that she had left the key with him, and there it was, it was all right for him to give it to me, there it was.

Q. Did he say anything to you about not moving in, or anything like that?

A. Oh, no.

Q. Do you know Mr. Lusky's relation with your father and your brother-in-law,—what color is your brother-in-law?

A. Well, I would say my brother-in-law is light brown skin, if I could describe him that way to the Judge.

Q. He is—

A. He is lighter than the gentleman there, (referring to the court's messenger).

Q. Somewhere in the range—look around here at those of us who are in here.

A. Well, I would say that he is about Mr. Urciolo's color.

Q. Well, now, what was Mr. Lusky's relation with your father, so far as you know?

A. Well, Mr. Lusky has been very pleasant toward my father. They seem to like to discuss the same things, and

they did hold conversations for a while, a couple of days or so after we moved in.

Q. Mrs. Lusky.

A. She hasn't had anything to say whatever.

Q. Now, Mr. Dayton,—the Daytons—live in 144,
430 do they not?

A. Yes, sir.

Q. Were the Daytons white?

A. Yes, sir, they are, so far as I know.

Mr. Gilligan: Of course, if your Honor please, I am objecting to this type of examination. I do not think it has a thing to do with the covenant.

The Court: Make your objection to any question.

Mr. Gilligan: To any question?

I object to this line of questioning. It has no value. They are in the house.—

The Court: You object to the question and not the line of questioning?

Mr. Gilligan: I object to this particular question.

Mr. Houston: The tender is: That Mrs. Hodge raised the issue as proof of her case, she got on the proposition, the only damage to the neighborhood was the question of sociability. I am trying to show that certainly as to many white persons in the neighborhood, that is not the fact.

Mr. Gilligan: You ought to bring them in, and question them.

Mr. Houston: It is certainly competent evidence for this woman to tell what her relationships were with these people.

The Court: The objection is sustained.

431 Mr. Houston: Is your Honor objecting to the line of examination or the question?

The Court: To the question.

Mr. Houston: The question?

The Court: Yes.

By Mr. Houston:

Q. Do you know a family in 144 Bryant Street, the man of the house and his name?

A. I know Mr. Dayton because he did some work for me after we had moved in the house.

Q. Did you have any conversation with Mr. Dayton?

A. I didn't; but my brother-in-law did.

Mr. Gilligan: I object to what your brother-in-law said.

By Mr. Houston:

Q. Was it in your presence?

A. Yes, it was.

Q. What was Mr. Dayton's attitude, so far as friendliness was concerned?

A. He was friendly enough.

Q. Now, what is Mrs. Amoia's attitude?

A. They have been very pleasant.

Q. Now, before you bought, did you know about colored people being on the square?

A. Yes, I did.

432 Q. How, and who?

A. Well, I was acquainted with a Mrs. Smith who lived in 164, one of our co-workers.

Q. At the Bureau?

A. At the Bureau of Engraving. I was also acquainted with Mrs. King who lives in 174.

Q. Mrs. Smith lives where?

A. 164.

Q. Mrs. King is in 174? All right, did you consider the neighborhood white or not white?

A. Well, I thought it was a mixed neighborhood, since there seemed to me to be as many colored as white.

Mr. Houston: That is all I want to ask.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Stewart, what color is Mr. Dayton, if you know?

A. Well, Mr. Urciolo, it would be very hard for me to tell, because each time that I have seen Mr. Dayton he has been in his working clothes, and I could not tell whether he was really colored, white, clean or dirty, to tell you the truth, because each time he was coming from a job. I would say, however, if I—

The Court: If you don't know, you must not say.

433 Mr. Urciolo: Your Honor, in these situations, as to color, it seems it is all a question of opinion.

May I ask what her opinion is as to Mr. Dayton, the present occupant of 144, whether he is white or colored?

Mr. Gilligan: I object to the question.

The Court: I must sustain that, in the light of her answer.

By Mr. Urciolo:

Q. Mrs. Stewart, as a native Washingtonian, do you consider this area the cultural negro center of the Nation's capitol?

A. No, I would not.

Q. You do not?

A. No.

434 Cross-examination.

By Mr. Gilligan:

Q. Mrs. Stewart, did you try to see the house before you bought it?

435 A. Yes sir; I did.

Q. Why didn't you see it?

A. I wasn't permitted to see it.

Q. Did they tell you why?

A. No, they didn't.

Q. What did you think was the reason?

A. Because I was colored, I was not permitted in.

Q. Did you at that time know that there was a restrictive deed covenant against negroes buying or occupying that house?

A. I was told there was in existence a covenant in the 100 block of Bryant Street. They didn't tell me anything about a perpetual covenant.

Q. But there was a restrictive—

A. (Interposing): But, an existing covenant.

Q. An existing covenant on the negroes?

A. I wasn't told whether it was on negroes or not.

Q. What did you think they meant when they told you that there was an existing covenant; what did you think they meant?

A. I thought it meant that we were not supposed to move in.

Q. When were you served with the suit against you?

A. The day before I moved into the house.

436 Q. The day before you moved in the house?
A. That is right.

Q. So you knew the suit was pending against you when you moved your family, father and others, in the house?

A. Yes, sir.

Q. And you knew what the suit called for, didn't you?

A. Yes, sir; I read it.

Q. Did you talk to Mr. Houston about it before you moved in?

A. No, sir, I had no dealings with Mr. Houston until this; I was called in, now.

Q. Did you talk to Mr. Horad about it?

A. I did.

Q. What did he tell you?

A. He told me if I wanted to take the chance,—all right.

Q. In other words, go in if you wanted to take the chance?

A. Yes, sir.

Q. There isn't any question about the fact that you did see Mr. Urciolo at the time, at the title company, is there?

A. No question.

Q. Did he tell you about the negro question in the covenant?

A. No, he did not.

437 Q. He did not?

A. No.

Q. I will ask you this, I don't think it matters—Mr. Lusky is an invalid, is he not?

A. I really don't know. I just see Mr. Lusky sitting on the porch, sitting on the bench.

Q. I thought you said you saw him and your father talking together.

A. Both sitting on their porches at the time; he was on his porch and my father was on our porch.

Q. Does he look to be an invalid to you?

A. I don't know because he is an elderly man and so is my father, both are invalids, I presume.

Mr. Gilligan: That is all.

Further cross-examination.

By Mr. Urciolo:

Q. My question is that—did anyone at the title company tell you anything about the covenant?

A. No.

438-440 A. No.

Q. In particular I am asking you, Mr. Brockway, do you recall Mr. Brockway?

A. Yes, I think Mr. Horad introduced me to Mr. Brockway when we went into the title company.

Q. Did he mention at any time anything about any covenant?

A. No.

Mr. Urciolo. That is all.

441 Now, on the record, your Honor, there are two things, one is that Mrs. Hodge called my attention to the fact that in the Amoia house, her recollection was refreshed when she heard Mrs. Stewart say that the youngster in her house played with the youngsters in the Amoia house. She said that refreshed her recollection of the fact that there are two more children in the Amoia house, I think she testified to two.

Mrs. Hodge: Yes.

Mr. Houston: A boy almost grown and two "teen" age children, you recall.

Mrs. Hodge: I don't know their names, but they have an apartment upstairs at Mrs. Amoia's, there is a little boy about two, and a little boy about five.

Mr. Houston: I wanted to get that in, in fairness to others.

The Court: Her testimony may be corrected to that extent.

Mr. Houston: I should also like to put in the fact that Mrs. Stewart has another boy, another nephew in the service who has been in the service, Wendell Jackson, her deceased brother's boy, and if you have no objection, that can—

442 Mr. Gilligan: I might ask the question, Did he ordinarily live with this family.

Mrs. Stewart: Yes, he did.

Mr. Gilligan: And if he was back in the city, would he live with you now?

Mrs. Stewart: Yes.

Mr. Houston: He is stationed at Fort Lewis, Washington, in the Engineering Corps?

Call Mr. Savage.

Thereupon HERBERT B. SAVAGE was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Savage, state your full name, please.

A. Herbert B. Savage.

Q. And your present address?

A. 134 Bryant Street, Northwest.

Q. How old are you?

A. 52.

Q. And your job?

A. I work at the Treasury Department.

443 Q. How long have you been there?

A. I have been there since '38, 1938.

Q. Raise your voice, please.

A. 1938.

Q. And you are a native citizen?

A. Yes, I am.

Q. And your ancestors, how far back were natives, as far as you know?

A. Oh, about three generations.

Q. You mean at least, to your personal knowledge?

A. Yes.

Q. How long have you ben at 134—how long at 134 Bryant Street?

A. 8th of October.

Q. That is, you moved in this Monday?

A. Yes, sir.

Q. On Monday?

A. Tuesday.

The Court: October of this year?

Mr. Houston: That is right.

By Mr. Houston:

Q. Tuesday of this week?

A. That is right.

Q. Now, where were you living prior to that?

A. 3705 New Hampshire Avenue, Northwest.

444 Q. Did you own that house?

A. No.

Q. What were you doing?

A. I was renting.

Q. Now, were you compelled to get out of that house?

A. I was.

Mr. Houston: If your Honor please,—

Mr. Gilligan: I make the same objection to the introduction of a suit that I did to the other one.

Mr. Houston: I ask that the file in the case of Junius S. Woodson and Wilmer S. Woodson versus Herbert B. Savage, 3507 New Hampshire Avenue, Northwest, filed in the Municipal Court July 2, 1945, in the Landlord and Tenants Branch for restitution of possession, 8707—

The Court: Now, if you offer the entire record—

Mr. Houston: I wanted to identify it sufficiently, your Honor, so that when I get the same ruling, I will have enough in the record so that the nature of it will appear.

The Court: And you would also have access to the complete record for the purpose of arguing it?

Mr. Houston: All right, sir. I will ask to have that marked for identification I think as Defendants' Exhibit No. 4, or, is it No. 6.

The Deputy Clerk: No. 4.

(The file thus identified was marked for identification only as Defendants' Exhibit No. 4.)

Mr. Houston: I move admission of that for the same reasons as the file in the case of Leo versus Stewart.

Mr. Gilligan: I object.

The Court: Objection sustained.

By Mr. Houston:

Q. Did you have any deadline from which to move from your property on 3507 New Hampshire Avenue?

A. I didn't understand.

Q. Did you have a deadline?

A. Yes, I did.

Q. In which you had to get out?

A. Yes, sir.

Q. What was that?

A. June the 10th.

Q. June 10, 1945?

A. Yes.

Q. Now, how did it happen that you stayed in after that?

A. They gave me an extension.

Q. When did that last extension expire?

A. It expired on October the—the last of October, I beg pardon,—the last of September.

Q. Last of September. Now, did you make any effort to get any other house except the house on Bryant Street which you actually bought?

A. I did.

Q. Well, state what you did in an effort to buy a house.

Mr. Gilligan: If your Honor please, I object to the line of questioning.

The Court: Objection sustained.

Mr. Urciolo: Your Honor, may I state that I think that the question is relevant because we want to show the fact that there was, No. 1, whereas houses are scarce and difficult to obtain, they are five times as scarce for colored people, and particularly in areas such as these where there are even vacancies, something that never occurs for colored.

The Court: The Court adheres to the ruling.

Mr. Houston: Well, may I just add one other factor, so as to get it in the record:

Under the change of neighborhood proposition, I think all the circumstances come up, and if the Court were in a situation in which the Court were undecided in the matter of change of neighborhood, obviously there has been some change, that could not be disputed, whether there would be sufficient occasion to warrant the nonenforcement,

447 I mean no injunction in such a neighborhood, it seems to me that the hardship on the defendants would be balanced over against the benefit to the plaintiff, injunctions being a matter of grace and not a matter of right.

For that reason, therefore, I should like to pursue the inquiry as to the efforts to get a house before he bought on Bryant Street, and the stringency, once again, of houses, or the lack of houses for negroes' occupancy.

The Court: The objection is sustained.

Mr. Houston: Before—

Mr. Gilligan (Interposing): The objection is sustained,

but Mr. Houston made one statement that I think ought to be objected to so that the record will show it. I object very seriously to the statement that this neighborhood hasn't changed in recent years.

The Court: Very well, that is one of the issues of the case.

By Mr. Houston:

Q. Mr. Savage, prior to the time that you bought, had you been familiar with the general area of Bryant Street, Adams Street, U Street, Flagler Place, Northwest, say between First Street and Second Street?

A. Yes, sir, I had.

Q. Had you ever actually been on Bryant Street?
448 Prior to the time that you bought?

A. I had.

Q. Did you know anything about the character, about the racial identification of the people who lived on Bryant Street in the 100 block, before you bought?

A. Well, I passed through Bryant Street several times, and I have seen white and colored in there.

Q. Did you consider the 100 block of Bryant Street a white neighborhood at the time you bought?

A. No, I didn't.

Q. Had you ever visited on Adams Street right back of Bryant Street?

A. I have.

Q. Before you bought?

A. I did.

Q. And were there colored people or white people living on Adams Street in the 100 block, predominantly?

A. They were colored.

Q. Now, were there colored people living right in back of your—on Adams Street, right back of your house you bought on Bryant Street at the time you bought?

Mr. Gilligan: At the time that he bought—go ahead, I don't object.

By Mr. Houston:

Q. Do you understand the question?

449 The Court: You may answer.

The Witness: Well, if he will let me explain.

The Court: It doesn't require any explanation, if you can answer it.

By Mr. Houston:

Q. I don't think—do you understand the question?

A. Ask me the question again.

Q. I said, at the time you bought, were colored people living on Adams Street right back of the house that you bought on Bryant Street?

A. Yes, sir; they were.

Q. Now, did anybody—has anybody ever offered you a chance to buy the Lanigan house at 122 Bryant Street?

A. Yes, sir; they have.

Q. Who was that?

A. Ask me the question again.

Q. Who was it that offered you the chance to buy 122 Bryant Street, the Lanigan house?

A. It was Mrs. Pettit's brother.

Q. Mrs. Pettit's brother? Was that Mrs. Pettit a white tenant on Bryant Street?

A. Yes, she was.

Q. Where was she living, approximately, on Bryant Street?

450 A. No, he was on 17th and K Street Northwest when he made the offer.

Q. Was he a real estate agent, a broker?

A. He said he was.

Mr. Houston: All right, your witness.

Cross-examination.

By Mr. Gilligan:

Q. Did Miss or Mrs. Lanigan ever offer to sell you the house? You can answer that easily.

A. I don't know Mrs. Lanigan.

Q. So she never offered to sell you the house?

A. I said it was Mrs. Pettit's brother.

Q. I asked whether Mrs. Lanigan, who owned the house—

A: No.

Mr. Urciolo: He answered that he didn't know Mrs. Lanigan.

The Court: Is your answer yes or no?

The Witness: Mrs. Lanigan?

The Court: Yes.

The Witness: No.

By Mr. Gilligan:

Q. When were you served with the papers in the suit against you and others in connection with this covenant, this area of Bryant Street?

451 A. I don't know the exact date.

Q. Do you remember what month it was in?

A. It was in the month of September.

Q. That was before you moved into the house, wasn't it?

A. Yes, it was.

Q. And did you receive a letter from me, and your wife, as regards the question of the covenant and moving into the house?

A. It was the same one I speak of, a letter from you.

A. The letter from me, did you have your letter—do you have the original with you?

A. No, I don't have it.

Mr. Gilligan: If your Honor please, I would like to offer in evidence as a plaintiff exhibit, a copy of a letter which I addressed to Mr. Savage, for identification.

The Court: Was it subpoenaed?

Mr. Gilligan: I think so.

By Mr. Gilligan:

Q. Did we subpoena it from you?

Mr. Gilligan: I brought this man down under subpoena, whether or not it was a duces tecum there, I am not sure.

The Witness: It was a notice that this case was coming up.

By Mr. Gilligan:

Q. Anything on the paper about the letter, bringing—

452 Mr. Houston: Mr. Gilligan, is talking about a subpoena. Did the Marshal leave a subpoena at your house for you, or give you one?

Mr. Gilligan: To come down here as a witness.

The Witness: At which date?

By Mr. Gilligan:

Q. Within the last three or four days, when the case was going to begin?

A. No.

Q. You have not received a subpoena at all this week?

A. No, not this week.

Mr. Gilligan: The only thing I can say, in response to this, if your Honor please, is that the Marshal informed me that all the parties had been subpoenaed, had been served.

Mr. Urciolo: Your Honor, I object to that. If he wants to bring the records in, or the Marshal, please have him do so.

Mr. Gilligan: I will be glad to, if necessary. I don't think it is necessary.

The Court: Is there any objection to his offer?

Mr. Houston: No, I won't object. I will just ask Mr. Gilligan to confer a similar favor on me sometime.

The Court: Let it be marked, then.

(The letter referred to dated October 1, 1945 addressed to the Witness Savage, was marked for identification as Plaintiff's Exhibit No. 12.)

453 Mr. Houston: Show it to Mr. Savage (Plaintiff's Exhibit 12 for identification passed to witness.)

By Mr. Gilligan:

Q. I show you this copy of the letter, Mr. Savage, and ask you if you can recall whether that is a copy of the letter which I sent you?

A. It looks like the same letter that I received and turned over.

Q. Does it read like the same letter?

A. Turned it over to Mr. Urciolo.

Mr. Gilligan: I would like to ask Mr. Urciolo if he has it in his file.

Mr. Houston: Let's see if by any chance, I have it.

The Court: Do you have it, Mr. Urciolo?

Mr. Houston: No, sir, I am sorry. I have it. I am the one.

This is it, Mr. Gilligan, I am sorry (producing original of plaintiff's Exhibit No. 12 for identification).

Mr. Gilligan: If your Honor please, I would like to withdraw the carbon copy and ask that the original letter be admitted, instead.

The Court: Show it to him (indicating witness) and see.
(Document passed to witness.)

The Witness: That is right.

By Mr. Gilligan:

Q. That is the letter?

454 A. Yes, sir; that is right.

Q. That is the letter?

A. Yes.

Mr. Gilligan: And the letter may be marked Plaintiff's Exhibit No. 12.

(Plaintiff's Exhibit No. 12, heretofore marked for identification, was thereupon received in evidence.)

Mr. Gilligan: I would like to read into the record this letter on my letterhead, October 1, 1945, to Mr. and Mrs. Herbert B. Savage, 3507 New Hampshire Avenue, Washington, D. C.

"Dear Sir & Madam:

"This letter is sent to warn you that 134 Bryant Street, Northwest, purchased by you, is under a deed of covenant, against sales, transfer, et cetera, to persons of the Negro race. The suit in which you are defendants is set for trial on October 9, 1945, and your occupancy of the property prior to the termination will be with actual notice not only of the suit itself, but also of the fact, if the Court upholds the covenant, it will be necessary for me to seek your immediate removal from the property by court order.

Yours truly,

HENRY GILLIGAN,

Attorney for Plaintiffs.

In Civil Action No. 29943."

455

By Mr. Gilligan:

Q. You received that letter?

A. Yes. May I ask you a question?

The Court: Did you receive the letter?

The Witness: I received it.

Mr. Houston: What did you want?

Mr. Gilligan: I have no objection to him asking a question.

The Witness: The question is, is that a subpoena for me to appear in this court?

The Court: No, that wasn't a subpoena.

By Mr. Gilligan:

Q. Mr. Savage, you are a negro, are you not?

A. Yes, sir; I am.

Mr. Gilligan: If your Honor please, I would like the record to show the date of service on Mr. Savage in the suit, in the original suit there.

Mr. Houston: Part of the record is in this very case.

Mr. Gilligan: Yes.

(File record passed to counsel and to Court.)

Mr. Gilligan: The record shows that Herbert B. Savage and Georgia N. Savage were served with the complaint on August 1, 1945.

456 By Mr. Gilligan:

Q. Have you ever seen Mr. Urciolo before today?

A. Yes, sir; I have.

Q. Did you see him at the title company?

A. Yes, I did.

Q. Was anything ever said to you at the title company, or by Mr. Urciolo, regarding the covenant in this case?

A. No.

Q. And through whom did you buy your house; what real estate agent?

A. Park Road Housing Company.

Q. And who is it that runs that housing company?

A. There is a Mr. Rivers.

Q. And he is a negro, is he?

A. Yes.

Q. Did he say anything to you about a covenant?

A. He did not.

Q. So that you never had anything discussed with you about the covenant prior to coming to trial today?

A. Prior to coming to trial today?

Q. Yes.

A. Yes, I have.

Q. Where?

A. Well, I have been in court all week, and it has been discussed.

457 Q. Was it discussed before that; did you discuss it with Mr. Houston, your attorney?

A. Yes, I did.

Q. Before you moved into the house?

A. Before I moved into the house?

Q. Yes.

A. Yes, I did.

Q. Did he tell you to move in, anyhow.

Mr. Houston: I object.

Mr. Gilligan: That is perfectly proper.

Mr. Houston: No, your Honor, once that—

The Court: You may answer.

Mr. Houston: Just a moment, your Honor. If it is a case of—I don't know what he is going to say, it is a case of confidential communication from client to attorney, or, I mean, attorney to client. You certainly can't go into that.

The Court: I have not heard that objection before.

Mr. Houston: I don't object, your Honor—

The Court: On the grounds of confidential communication, it is sustained.

By Mr. Gilligan:

Q. At any rate, you talked to your attorney before you moved in, didn't you?

A. Yes, I did.

458 Q. And moved into the house on Tuesday of this week?

A. Yes, sir.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Savage, as a matter of fact, I explained to you the covenant, did I not?

A. (No response).

Q. In my office.

Mr. Houston: When?

Mr. Urciolo: About two or three weeks ago.

The Witness: You may have, but I don't recall.

By Mr. Urciolo:

Q. To refresh your recollection——

A. All right.

Q. —do you or do you not recall my stating to you that this house had a perpetual covenant against sales to negroes, and also that the same perpetual covenant existed on several houses on Adams Street?

A. Yes; I recall that.

Q. Returning to your conversation with Mrs. Pettit's brother the real estate broker, did he tell you what price it went for, his house, the Lanigan house?

A. No, he didn't.

Q. What did he say to you? Sorry, that will be
459 objectionable.

Mr. Urciolo: I will withdraw the question.

By Mr. Urciolo:

Q. Who was present when he offered you, or asked you, if you wanted to buy the house, or had any friend who wanted to buy the house?

A. Mrs. Pettit and——

Q. Raise your voice.

A. Mrs. Pettit, and Mrs.—it is a very hard name to call, how do you pronounce that, her sister that lived in 134?

Mr. Urciolo: No further questions.

Mr. Gilligan: No questions.

The Court: You may step down.

(The witness left the stand.)

Mr. Houston: Call Mr. Hurd.

If your Honor please, on thinking the matter over, I am perfectly willing to have Mr. Gilligan ask Mr. Hurd, not Mr. Hurd, Mr. Savage, anything I told him, if you want. I'd like to ask him.

Mr. Gilligan: I would like to ask the question.

The Court: Come back, please, Mr. Savage.

Thereupon, Herbert B. Savage was recalled as a witness and, having been previously duly sworn, was examined and testified further, as follows:

460 Mr. Houston: I do that so my own position will be clear all the way through.

Mr. Gilligan: What is the use of asking—

The Court: Put your question.

Further cross-examination.

By Mr. Gilligan:

Q. Did Mr. Houston advise you, when you saw him before you moved into the property, to go ahead and move in, anyhow? Don't look at Mr. Houston; look at me.

A. No, he did not.

Q. He did not? You said—

Mr. Houston: Well—

Mr. Gilligan: I wanted to make sure of one thing.

By Mr. Gilligan:

Q. You said you moved into the house on Tuesday, October 9, you meant, you said you moved in on the 8th, and you meant the 9th?

The Court: Tuesday is the 9th.

Mr. Gilligan: He said the 8th, but he said on Tuesday; he moved into the house on Tuesday, and that is the 9th.

The Witness: That is the day I moved.

Mr. Gilligan: That is Tuesday of this week.

Mr. Houston: That is all.

The Court: You may use this if you want to (passing calendar to witness).

461 The Witness: Tuesday the 9th is right.

(The witness left the stand.)

Thereupon, JAMES M. HURD was called as a witness for and on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. State your full name, will you, please?

A. James Mason Hurd.

Q. And your age.

A. I am 54 years old.

Q. And your residence?

A. 116 Bryant Street, Northwest.

Q. When did you move in?

A. I don't recall the exact date, but it was last year sometime.

Q. Has it been over a year ago, as far as you can recall?

A. As far as I can recall, it is over a year.

Q. Now, Hurd, what is your ancestry?

A. You mean my mother and father?

Q. Yes.

A. Well, they are considered as Mohawk Indians.

462 Q. So far as you know, you have no negro blood in you at all?

A. Not as far as I know.

Q. Where are you from?

A. I am out of the Rocky Mountains, North Carolina.

Q. What they call the Smokeys?

A. The Old Smokey.

Q. When did you come out of the mountains?

A. When I was very small around, I guess I was two or three years old, so I was told.

Q. Well, where did you go?

A. My family moved to Knoxville, Tennessee.

Q. What sort of neighborhood was it that you lived in?

A. White neighborhood.

Q. Your neighbors were white?

A. All white.

Q. Playmates were white?

A. All white.

Q. Your father worked—how?

A. He was a stone mason.

Q. Was he considered white or colored, or what?

A. Worked as white or colored, either one, he drew no line. There was no line drawn to him as I know of.

Q. Now, did you have any schooling at all?

o A. I had about three years schooling.

463 Q. Where did you take your three years of schooling?

A. In Knoxville College.

Q. Now, did all races go to Knoxville College at the time you were there?

A. There were plenty of Indians there, and colored, all white teachers.

Q. White teachers?

A. Yes, sir.

Q. Any white children going there at that time?

A. They didn't call themselves white; they called themselves Indians.

Q. After you left Knoxville College, what did you do?

A. I went to work for my father, helping him.

Q. And after that?

A. I left him when I was 14 years old and went to travelling.

Q. Now, when you were travelling, were you travelling as a white or colored man, or what?

A. I travelled as white.

Q. Did there come a time—did you serve in the First World War?

A. No, sir; I did not.

Q. Why?

A. Well, at that time I was exempted.

Q. How and why?

464. A. I was an automobile mechanic and steam engine mechanic.

Q. Where did you go?

A. They gave me, the Government gave me a job in the Roundhouse as steam engine mechanic.

Q. Now, was that job a white job, or a colored job?

A. It was a white job.

Q. Did you hold any union card?

A. Yes.

Q. And in what union?

A. Boiler Makers Union.

Q. Now, the Boiler Makers Union admits negroes?

A. No, sir.

Mr. Gilligan: Do you know that?

Mr. Houston: Do I know that?

Mr. Gilligan: I think that was the evidence.

Mr. Houston: Do you have a card?

The Witness: This was 1914 to 1917, I haven't joined the union since then.

By Mr. Houston:

Q. Now, did there—

A. I think I could get it, a duplicate from it, even the length of time it has been, I am not sure.

(There was discussion off the record.)

By Mr. Houston:

Q. Mr. Hurd, did there come a time when you met
465 Mrs. Hurd?

A. Yes, sir; I met her in New Jersey, in my traveling around. When I met her she was living in the white neighborhood, Italian neighborhood.

The Court: Read that answer.

(The preceding answer, as above recorded, was read by the reporter.)

By Mr. Houston:

Q. Did there come a time when you married?

A. Yes, sir.

Q. Where did you marry?

A. I was working in North Carolina, Asheville, North Carolina, and at the time I sent for her to come down and we went to Hot Springs, and we married.

By Mr. Houston:

Q. When did you come to Washington?

A. I have been in and out of Washington, coming
466 here, to live?

Q. Yes.

A. I came here to live the last time.

Q. After you were married?

A. We came here in '28.

Q. '28—and you married, when?

A. In '28.

Q. And came right here to live?

A. Yes, sir.

Q. Now, since you have been here, you have been working how?

A. I have been working for the Weldit, Incorporated, and myself, and worked in several white shops around Washington.

Q. Several white shops in Washington?

A. Yes, sir.

Q. Did there come a time when you bought a house at 116 Bryant Street?

A. Yes, sir.

Q. How did that happen?

A. Well, I had been looking for a house for pretty near three years or more, and the type of house I wanted to find, I couldn't find one. If I found one, the price was too high, and so one day I just happened to be driving down Bryant Street and seen the house empty so inquired about it
467 and found it was for sale.

Q. Who did you buy through?

A. Sir?

Q. Who sold it to you?

A. Mr. Richardson.

Q. Was he white or colored?

A. White.

Q. Did Mr. Urciolo have anything to do with that sale, as far as you know?

A. Not as far as I know.

Q. Did you ever see him in connection with this sale?

A. No.

Q. Did there come a time when you received a letter from Mr. Gilligan—wait a minute, let's see if I have got it (going through papers).

I show you a copy of a letter that has been already introduced in evidence by Mr. Gilligan, and ask you if you got that letter (Plaintiff's Exhibit No. 2).

A. I did.

Mr. Houston: He is referring to Plaintiff's Exhibit No. 2.

By Mr. Houston:

Q. Now, I show you Plaintiff's Exhibit No. 3, and ask you is that the letter that you wrote Mr. Gilligan in reply?

A. Yes, sir.

468 Q. Who prepared the letter?

Mr. Gilligan: I object to the question as to who prepared the letter. It does not make any difference who prepared it. It was a letter and he signed it. He said so.

Mr. Houston: May I ask who helped prepare the letter, your Honor?

The Court: He may answer.

The Witness: Mr. Richardson prepared it for me.

Q. Where did you sign it?

A. I signed it at the place I worked at.

Q. Now, it says in here:

"In connection with your threatened action to bring about removal of my wife and myself from premises known as 116 Bryant Street, Northwest, for the sole reason that we are of negro extraction, please be advised that we have no desire to litigate the matter and will be more than glad to move from the neighborhood in which we now find we are not wanted."

How does it happen that you signed the letter, saying that you were negroes?

Mr. Urciolo: I object, Your Honor. The letter does not state that he is a negro, it says, "Whereas——"

469 The Court: You didn't read that part.

Mr. Houston: I didn't read that part of the letter? What he said about being a negro?

The Court: Yes.

Mr. Houston: I just finished reading the letter.

Mr. Urciolo: Read it slowly.

Mr. Houston:

"In connection with your threatened action to bring about removal of my wife and myself from premises known as 116 Bryant Street, Northwest, Washington, D. C., for the sole reason that we are of negro extraction, please be advised that we have no desire to litigate the matter and will be more than glad to move from the neighborhood in which we now find we are not wanted."

The Court: That is not an admission on his part that he is a negro. He is just reciting that Mr. Gilligan has——

Mr. Houston: I accept it.

Mr. Gilligan: If your Honor please, I don't suppose this is the time to make any suggestions in regard to that, but if this isn't an admission that he — of negro extraction, I don't know what it is.

The Court: It may be construed so, but I thought, as quoted, it wasn't so.

Mr. Houston: Now that my attention is called to it, I have no objection to facing it. That is one of the
470 things I wanted to face when I asked about the time of the marriage of Mr. Hurd, but Mr. Gilligan stopped that.

The Court: Let's go ahead with the examination.

Mr. Houston: On that, I respectfully state that the letter—the sense of the letter is certainly as your Honor has indicated, and therefore, I won't examine further on the letter.

The Court: I mean to say, it is a matter of construction.

Mr. Houston: I agree with that, your Honor.

The Court: As distinguished from exact language.

Mr. Houston: I agree entirely to that.

Mr. Gilligan: It is a matter of construction, but it is perfectly clear construction.

The Court: That is something we can argue about later.

By Mr. Houston:

Q. Mr. Hurd, have you had any trouble with your neighbors?

A. Not a bit.

Q. Now, the little Johnson boy, did he ever visit your house?

A. Several times.

Q. Did he come in and eat with you?

A. Yes, sir.

Q. Are you friendly with the Johnsons, generally?

471 A. Yes.

Q. What have you done to your house since you have been in there?

A. Did a lot of remodelling on it; painted it up; did a lot of work on the inside; plastered and papering, and stuff like that.

Q. Now, the son Mrs. Hurd testified about, her son that was in the service, is that your boy?

A. No, sir; that is my stepson.

Q. And you run a welding business—where?

A. 2231 8th Street, Northwest.

Mr. Houston: Just a moment.

Your witness.

Mr. Urciolo: No questions.

Cross-examination.

By Mr. Gilligan:

Q. Did you ever talk with me over the telephone before you received the letter from me?

A. Yes, sir; I talked to you.

Q. Did I explain to you that negroes could not occupy those premises because of the deed covenant?

A. The way you talked to me over the telephone, you talked like you was talking to a dog and, therefore, I didn't care about talking to you, and lots of things you said.
472 I didn't pay any attention to and to tell what you said,—I can't recall or repeat it word for word at all.

Q. You don't recall anything?

A. But what you said, I do not know.

Q. Then, you did get this letter, which is Plaintiff's Exhibit No. 2, from me, did you not?

A. I received that letter.

Q. How do you know?

A. No, I do know I received it.

Q. Did you—had you seen it?

A. I seen that copy a while ago.

Q. And it speaks about the fact that—at the time that you were on actual as well as constructive notice about negroes being prohibited from occupying or renting, leasing, and so forth, the premises there?

A. That stated that, but as I am an American citizen, I do not feel that another American citizen, as a body, could stop another American citizen from buying or living in a home.

Q. Whether a negro or not?

A. Regardless of what it was,—American citizens.

Q. In other words, so long as you are an American citizen, all of us, we have a right to buy and sell and live where we wish?

473 A. Yes.

Q. And that is what you did?

A. That is what I did.

Q. And regardless of whether the property has a deed covenant on it or not you didn't care?

A. I did care about it, and I looked into it.

Q. You looked into it before moving?

A. Before I moved.

Q. After finding out that it had a deed covenant, and knowing that you were of negro blood?

A. I didn't know I was of negro blood and didn't state I was of negro blood.

Q. Don't it say it here (indicating exhibit)?

A. No, I didn't state it was negro blood.

Q. Didn't you say it to me?

A. No, sir.

Q. And you didn't say it to Mr. Richardson?

A. No, sir; Mr. Richardson didn't ask whether I was colored or white.

Q. Did he say anything to you about it when the two of you were at the title company?

A. That it had a covenant on it.

Q. Against negroes?

A. Against negroes.

Q. And said for you to take a chance?

474 A. He didn't say anything about taking a chance.

Q. He didn't?

A. Didn't ask whether I was colored, or not.

Q. You are a pretty capable man in the matter of reading and knowing what you sign?

A. Some words I can understand; some I cannot.

Q. Did you misunderstand that?

A. I misunderstood a whole lot of that.

Q. Did you mean what you said by "for the sole reason that we are of negro extraction"?

Mr. Urciolo: I think that he is becoming argumentative, your Honor.

The Court: He may answer.

Mr. Gilligan (reading):

"For the sole reason that we are of negro extraction"?

The Witness: At the present time I can't answer that question proper.

By Mr. Gilligan:

Q. What do you mean, can't answer it proper?

A. First I have to have time to think it over.

Mr. Gilligan: Would your Honor let him have two or three minutes to think it over?

The Witness: Give me the letter to read over and think over.

(Letter was handed to witness.)

475 The Witness: What was the question?

By Mr. Gilligan:

Q. Whether or not you, in reading the letter and writing in it that you were of negro extraction, you meant it.

A. Whether in reading the letter and writing it?

Q. And signing it.

Mr. Urciolo: He stated he did not write the letter.

The Court: He may answer.

The Witness: I signed the letter, but did not properly read it.

By Mr. Gilligan:

Q. Did not read it over at all?

A. No.

Q. Didn't know anything about what it contained?

A. No.

Q. Didn't know anything about the letter I wrote, and what it contained?

A. No.

Q. So that you sit here and deny to this Court that you ever had the slightest idea what the letter contained, even though you signed the one in reply to my letter?

A. I didn't realize that it was going to cause all this disturbance.

The Court: Let's have that answer.

476 (The preceding answer, as above recorded, was read by the reporter.)

By the Court:

Answer the question.

The Witness: I deny that I realized what was in the letter; is that what you want?

The Court: Read that answer.

(The preceding answer as above recorded, was read by the reporter.)

By Mr. Gilligan:

Q. Where was this letter that you signed, signed?

A. I signed it at my place of work.

Q. Your place of work?

A. Yes.

Q. Who brought it to you?

A. Mr. Richardson.

Q. And he explained to you?

A. Didn't have time to explain it to me.

Q. Why not?

A. He was busy and I was busy myself at that time. We promised some work and we didn't have time to discuss anything.

Q. How did he happen to write the letter for you?

A. That I don't know.

Q. Did you turn over my letter addressed to you to
477 Mr. Richardson for answering?

A. Did I turn your letter over?

Q. Sure.

A. Sure, I sent a copy of the letter.

Q. Then the reason why he answered this letter, wrote it for you, was because you turned this over to him to answer?

A. I turned it over to him to find out what it was all about.

The Court: Let's hear that answer. :

(The preceding answer, as above recorded, was read by the reporter.)

By Mr. Gilligan:

Q. Did you find out what it was all about?

A. The letter I wrote you, I sent to you, all I know.

Q. Didn't you discuss the type of answer he was to make for you?

A. No, sir.

Q. Where did you give him the letter that I wrote you?

A. I mailed it to his house, if I recall properly.

Q. Did you write him this letter with it?

A. No, sir.

Q. Did you talk with him by telephone?

A. Talked with him over the 'phone.

478 Q. Tell the Court what the gist of your conversation with him over the 'phone was?

A. I called him up when I received the letter and told him I received a letter from you and I was sending it out to him.

Q. What else?

A. That is all.

Q. Nothing about answering it?

A. No, sir.

Q. Why did you sign it then,—the answer?

A. Well, as confused as I was at that time, and I am very nervous and highstrung, don't like trouble, always run away from trouble, don't get into no mixup or jams and all this thing here had put me in the hospital and I stayed there three weeks after I talked to you the last time over the phone.

Q. You talked to me more than once.

A. The last time I talked. You called me two or three times.

Q. Trying to get you to go along and do what you said you would do.

A. I said I would, when I could find a place. Then after that, my wife says she liked the place and wasn't going to move anywhere.

Q. Under any circumstances?

479 A. Because she has as much right to live in a house as anybody.

Q. Even if of negro blood?

A. Don't put words in my mouth.

Q. I am asking you.

A. Did she say that?

Q. Is she of negro blood?

A. I don't know.

Q. You say that she lived among white people in New Jersey?

A. I said that she lived among white Italians.

Q. Why did this impress you, that she lived among white Italians, rather than colored or negroes?

A. Why?

Q. Why did that impress you? You seem to remember it clearly.

A. Sure, you remember your own affairs more than you do anything else.

Q. Let's get back to your own family. Do you remember your grandfather and grandmother on either side?

A. I remember my grandmother.

Q. Which side?

A. Mother's side.

Q. What was her color?

A. She was real light.

480 Q. And was she of negro extraction?

A. No, sir.

Q. Do you remember your grandfather, on your mother's side?

A. Never seen anybody, any of my father's people, but him.

Q. Who is him, Mr. Hurd? Your father?

A. Yes, sir.

Q. What color is he?

A. Real light.

Q. Of negro extraction?

A. No.

Q. How do you know?

A. Going by what he said.

Q. He told you he was white?

A. That is right.

Q. Did you talk to your mother?

A. Talked with my mother,—yes.

Q. Was she of negro extraction?

A. No.

Q. Wasn't she really a negro living in North Carolina when she married your father?

A. No, sir.

Q. Dr. Cooper who testified here yesterday in connection with Indians made the statement that you must never
481 ask an Indian if he is, or if he has negro blood because he won't answer that, if it is true.

Mr. Urciolo: I don't recall that statement. I would like to have it read from the record. I don't recall asking him that question.

Mr. Houston: I think I do.

The Court: The Court does not remember whether you did, or not.

Mr. Gilligan: Mr. Houston said he remembers it.

Mr. Houston: It is my impression we were engaged in a discussion of Seminoles and the Five Civilized Tribes in Oklahoma and the question came up as to who was an Indian and who was not, and it was said it was a question of time and place how they were regarded; that he didn't go to them and ask them.

Mr. Gilligan: In North Carolina or Oklahoma?

Mr. Urciolo: In their particular section.

Mr. Gilligan: North Carolina, or Oklahoma?

Mr. Houston: Indians all the way down, and somebody,

Mr. Hodge,—

The Court: Was the testimony that when the Indians were asked about it, they would not say? That is the purport of the question.

Mr. Houston: As I understand, he said it was a touchy question. But they didn't ask.

482 Mr. Gilligan: Refused to ask and were very careful about any questions in that regard.

Mr. Houston: Ask it directly, then. He is under oath.

By Mr. Gilligan:

Q. As an Indian, if you are an Indian, you don't like to be asked whether you have negro blood, do you?

A. That is exactly the reason I haven't got a first class job today.

Q. I don't call that responsive. All right. That is a reason you have a—

A. I haven't got a first class job today.

Q. Because you don't admit that you have negro blood?

A. I don't like people asking me those things. Everytime you turn around, somebody is asking your color. Is you white, or what is you. You get tired of those things.

Q. But you did sign this letter?

A. Yes, I signed it.

Q. It says the only reason in getting out is because of negro extraction; and you say because of negro extraction.

Mr. Urciolo: The letter speaks for itself.

Mr. Gilligan: I am trying to get him to make his answer clear.

The Court: He may answer.

The Witness: I signed the letter.

483 By Mr. Gilligan:

Q. It speaks for itself?

A. I signed the letter.

Mr. Gilligan: You gentlemen are finished with it (indicating document)?

Mr. Houston: Yes.

The Court: You may step down.

(The witness left the stand.)

The Court: Well, address the Court, then.

Mr. Houston: Mr. Gilligan—

The Court: Don't talk to him; talk to the Court.

Mr. Houston: I should like for the purpose of clarity, if the Court desires, and Mr. Gilligan is willing, to go into this situation, go into the situation of Mr. Hurd identifying himself with negroes, and I will put a question in as to why he identified himself as negro.

The Court: That will be all for today, gentlemen. And I indicated there will be no afternoon session of this Court after recess, so I will ask you to return at 10 o'clock on Monday morning; and the Court, for other purposes, will be adjourned until 1:30.

(Thereupon, a recess was taken at 12:35 o'clock p. m., until Monday morning, October 15, 1945, at 10 o'clock, a. m.)

Monday, October 15, 1945.

Pursuant to recess, the above-entitled causes came on for further hearing and trial at 10 o'clock a. m., before Hon. F. Dickinson Letts, Associate Justice.

Appearances:

Henry Gilligan, Esq., for the Plaintiffs.

Charles H. Houston, Esq., for all defendants with the exception of Raphael G. Urciolo.

Raphael G. Urciolo, Esq., appearing in his own behalf.

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PROCEEDINGS

Mr. Houston: May it please the Court, over the week end the matter developed which is causing me to file two motions asking Your Honor to disqualify himself and certify this case to another judge. I have set forth in the motion—in the affidavit supporting the motion—my certificate as counsel, the facts upon which the motion is based. A separate motion is made in each case.

(Documents placed before the Court.)

The Court: I think the record should show what the proceedings now are. The following affiants are in each of the cases before the Court—

Mr. Houston (Interposing): No, sir, James M. Hurd is in one, and the reason that the other defendants have not filed their affidavits was because, frankly, your Honor, I was not able to prepare them. I have no secretary, as I told your Honor the other day, and in order to save the point, I had to just file in each case, and I didn't get through that until 2 o'clock last night, and I should like to reserve the opportunity to make the same affidavits in behalf of the other defendants.

Mr. Gilligan: Before you proceed, it seems to me that the Section of the United States Code under which the affidavit is made, should be before the Court. If I may say this, of course it isn't my answer to that at all, but I notice that that section, Mr. Houston called my attention to this
489 yesterday afternoon,—such a motion and affidavit must be filed and the matter must be brought to the attention of the Court at least ten days before the trial of the case begins.

Mr. Houston: That is right, or—good cause shown. It is Title 28, Section 35.

Mr. Gilligan: I think it ought to be before the Court.

Mr. Houston: I would have brought it, your Honor, except that I had not the time. I left the—

The Court: Continuing the Court's statement: An affidavit has been filed by Pauline B. Stewart in Civil Action No. 29,943, and by James M. Hurd in case 26,192. The Clerk has stamped over it. What is it?

Mr. Houston: 26,192.

The Court (Continuing): In each case the affiant charges the presiding justice with personal prejudice and bias against the defendants, making the affidavits.

At this point I would like to inquire of Mr. Houston whether or not that language is now relied upon or whether it is the specific charge made in these affidavits alone that is to be regarded by the Court.

Mr. Houston: I don't think you mean the general allegation of personal prejudice and bias is not sufficient, I mean that must be supported by detailed statements and the detailed statements appear at the bottom. Is that the question Your Honor asked me?

490 The Court: I find the affidavit charged, and the general language is, that this Court ascertained personal prejudice and bias against the affiants.

However, that general language is followed by specific language to the effect that the presiding judge lives in a house which is covered by a restrictive covenant such as we have in this case.

Now, my question was whether or not you are relying upon the general language of "bias and prejudice" or upon the allegation of bias and prejudice only so far as it relates to his living in the property.

Mr. Houston: I think it is both, Your Honor, because I checked up with the defendants on the next allegation, which says:

"That in said trial the presiding justice has been personally biased and prejudiced against affiant and his wife who are alleged to be colored, and in favor of plaintiffs who are alleged to be white persons because of his interest in the issues involved in the case."

Now, I am relying—both statement—and I consulted my clients before those statements were made. It is their feeling and that is the situation, and as their counsel, I have made the allegation for them and they have sworn to it.

The Court: Still, I don't understand your motion as to the position of your clients. Is the bias and prejudice only because of the allegations that I lived in the property which is subject to a restrictive covenant?

491-493 Mr. Houston: No, sir, not simply because of that;

I mean, when the clients went out, when my clients went out of court they felt your Honor had his mind made up against them. I mean, if you want to put Mr. Hurd on the stand, he is here; and Mrs. Stewart is here, but at that time, I mean there was absolutely nothing that I had upon which I could come in and make an objection. I have explained to your Honor my position in the case. I make no apologies of course for doing anything within the law, representing my clients, but it was not until the information came to me Friday afternoon concerning the facts that your Honor lived in a house with a covenant on it and that was verified on Saturday and there wasn't anything that in my opinion justified what, up to that time, so far as I was concerned, was a feeling which many litigants have, I mean to say, during the course of litigation, but the few things

brought together, to my mind, gave me a legitimate ground for making the motion, which I did; so I am standing on both ground.

The Court: The general allegation of bias and prejudice, I take it, is because some defendant, after the cases started and after the Court had made certain rulings, advised counsel that in her opinion the presiding judge entertained bias and prejudice?

494 The Court: Well, the Court thinks the allegations as to bias and prejudice have relation only to the allegation that the trial judge occupies a house that is covered by a restrictive covenant, similar to the one here involved. The Court will state for the record that he does not own the property in which he lives, that being 3500 Garfield Street, Northwest; that the property is in the ownership of W. C. and A. N. Miller Development Company and this Court has no personal knowledge as to whether or not said property is subject to a restrictive covenant such as is alleged, or any other restrictive covenant. The Court has no knowledge of the matters of title, and does not, even now, know the legal description of the property which he occupies.

The Court, I think, must overrule the motion.

Mr. Houston: May I say for the record that the allegation does not charge that the Court owns the property, the allegation specifically says "lives in or has an interest in the premises."

For the reason that Your Honor had not been interrogated, we made no allegation as to knowledge, but it is our flat position that it is a situation in which you have a condition which makes a climate of the trial unhealthy

495 and I should like to make a motion, on the basis of this affidavit, in open court, for your Honor to disqualify himself on the ground of interest, for the reason that the decision in this Court is a part and parcel of helping to make a law involving the house in which your Honor is living.

The Court: That would have to be formal, I assume.

Mr. Houston: Except, Your Honor, being made in open court and this being the first opportunity, I would be glad to reduce it to writing, but it is my understanding that I can make an oral motion in court.

The Court: It would have to be based on affidavit—

Mr. Houston: I am basing it in facts, according to James M. Hurd, in 26,192, and Pauline B. Stewart in 29,943, based on those affidavits. As to the discussion here of the interest which Your Honor has in the property under a covenant similar to the one here in suit,—

The Court: The motion will be denied; but, in order that you may save the point, the Court will say that he has no interest in the premises which he occupies as his home except that which adheres to a month-to-month tenancy.

Mr. Houston: Of course, our position is, you don't measure the interest, if the interest is there, it is not the quantum, but the quality of interest.

The Court: Very well. I think you may proceed.

Mr. Gilligan: If Your Honor please, I think for the
496 record this section of the Code should be in there.

The Court: Will you read that?

Mr. Gilligan: Section 25 of Title 8 says:

“Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard, has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein but another judge shall be designated in the manner prescribed in Section 24 of this title, or chosen in the manner prescribed in Section 27 of this title, to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists and shall be filed not less than ten days before the beginning of the term of court, or good cause shall be shown for the failure to file within said time. No party shall be entitled in any case to file more than one such affidavit. No such affidavit shall be filed not accompanied by a certificate of counsel of record that such affidavits or applications are made in good faith. The same proceeding shall be had where the presiding judge shall file with the Clerk of the Court a certificate that he deems himself for any reason unable to preside with absolute impartiality in the pending suit or action.”

497 It is there and with a very definite note from decisions in connection with the matter which I would like to have in the record, but I think it is—

The Court: You can cite it.

Mr. Gilligan: It is the case of *Henry v. Speer*, Ga., 1913, found at 201 Fed. 869, 120 C. D. A. 207—pardon, leave that out,—the case is *Mr. Justice Lutton*, ex parte *American Steel Barrel Co.*, 1913, 230 U. S. 35, 33 Supreme Court, 100857, Law. Ed. And then there is the decision in re *Equitable Trust Company of New York*, a California case of 1916, found at 232 Fed. 863.

Mr. Houston: 232, 863?

Mr. Gilligan: In which it is spoken of as the basis of disqualification being "that the personal bias or prejudice exists by reason of which the judge is unable to impartially exercise his functions in the particular case." It is a provision obviously not applicable save in those rare instances in which affiant is able to state facts which tend to show not merely adverse rulings already made, which may be right or wrong, but facts and reasons which tend to show personal bias or prejudice. It was never intended to enable a discontented litigant to harrass a judge because of adverse rulings made, for such rulings are reviewable otherwise, but to prevent his future action in the pending case; neither was it intended to paralyze the action of the judge 498 who has heard the case, or a question in it, by the interposition of a motion to disqualify that hearing and the determination of the matters heard. This is the plain meaning of the requirement that the affidavit shall be filed not less than ten days before the beginning of the term.

If Your Honor please, I feel that I must personally say that I think the affidavits and the motions are perfectly ridiculous.

Mr. Houston: Well, that is counsel's opinion, and also I want to call attention to *Whitaker* at 118 Fed. 2d, 596, 73 App. D. C., in which the matter came up and developed during the trial itself. The language of the Code specifically says "that the affidavit shall be filed not less than ten days before the beginning of Court or good cause shall be shown for failure to file within such time."

We stand on the record.

Thereupon Mr. JAMES M. HURD, the witness under examination at the time of the recess, resumed the stand, and being further examined, further testified as follows:

499 Cross-examination—Resumed.

By Mr. Gilligan:

Q. Do you own an automobile, Mr. Hurd?

A. Yes, sir.

Q. What is the license number?

A. I don't remember just exactly what it is.

Q. You don't remember?

A. No.

Q. Do you have your permit with you?

A. No, I haven't. It is in the car.

Q. Is it 79274?

A. 79—I think that is what it is, but I am not sure.

The Court: He says he was not sure.

By Mr. Gilligan:

Q. Not sure?

A. Not sure what it is.

Q. When you get an opportunity will you bring that permit into the court with you so that we may see it a little later?

A. All right.

Q. When you applied for permission to operate an automobile, what did you say was your color?

A. I didn't give any color.

Q. Didn't give any color at all?

500 A. No, sir.

Mr. Gilligan: That is all. I haven't any other questions.

Mr. Houston: No questions.

Mr. Urciolo: No questions.

The Court: Step down.

Thereupon NEVILLE D. MILLER was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. State your full name, please?

A. Miller—Neville D. Miller.

Q. What is your work, Mr. Miller?

A. Classified manager, Evening Star.

Q. For how long?

501

A. At the Star, forty-two years.

Q. Forty-two years.

Mr. Miller, will you please state what happens when a real estate agent calls in a house for sale to colored, in a non-colored neighborhood? Will you accept that add, or not?

A. Well, it is no positive rule, there is no positive rule on that, but we try to cooperate in the matter of not advertising to colored in known white sections.

Q. Would you explain further what you mean "there is no rule on it"? I don't understand you. Do you accept them or don't you?

A. Well, I mean that we could not say positively in any one case; we might not always know.

Q. But in cases where you accept them and then find out, do you then refuse to put in such adds?

A. We try to keep them out in the future, yes.

Q. Is that because of pressure on the part of the Washington Real Estate Board?

A. No, it is a matter of cooperation.

Q. With the Washington Real Estate Board?

A. And readers of the paper, yes.

502 Q. Who makes that policy, Mr. Miller? Do you yourself make that policy or have to follow the advice of superiors?

A. Policies are made out by the Evening Star Newspaper Company.

Q. And then directions are given to you, and do you in turn give those directions to the girls who take in the adds?

A. We give the directions to the departments, we carry out the orders of the company in that manner.

Q. How long has such a policy existed?

A. I couldn't answer that exactly, but quite a long time.

Q. Have you heard any complaints from real estate men concerning such a policy?

A. No, sir; never. I don't recall one.

Q. But you do recall taking adds which later on you have ordered cancelled?

A. That has happened.

Q. And the reason they were cancelled—

A. Well, I couldn't say cancelled; I would say renewals not accepted.

Q. Renewals not accepted?

A. Yes.

Q. Is it also your policy, Mr. Miller, that you will not accept an add which reads "Gentiles only"?

A. We try to substitute a better word such as "Restricted."

503 Q. I must ask you flatly, do you refuse those adds, or don't you?

Let's suppose that a recalcitrant advertiser insists on the words "Gentiles only", will you accept it, or would you not?

A. We probably would not.

Q. You would not accept the add?

A. No.

Mr. Urciolo: No further questions.

Mr. Gilligan: I have no questions, Mr. Miller, thank you.

Thereupon, EDWARD L. WILLS was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

504 Direct examination.

By Mr. Urciolo:

Q. State your full name, please.

A. Edward L. Wills.

Q. What is your business?

A. I am a real estate broker.

Q. Mr. Wills, in your transactions as a real estate broker, have you ever called in an add—an advertisement—into the Evening Star, which they have refused because you wanted to sell a house in a borderline neighborhood, labeling the add "Colored"?

Mr. Gilligan: Don't answer that until I have an opportunity to object.

If Your Honor please, I object to the question because it has nothing whatsoever to do with this particular case. If he were to qualify it and ask him about Bryant Street, then I would have no objection whatever; but to have a question,

a general discussion of a question of that kind, I object to it.

The Court: What is the purpose of the question?

Mr. Urciolo: The purpose, Your Honor, is this: Again following the same trend, that it was my position that the scarcity of houses for the negroes was about five times as great as that for the white people, and that not only is there the question of the fact of approximately 80 per cent of the property is covenanted and restricted against 505 negroes, but also that even such instrumentalities as the Washington Real Estate Board and the Evening Star newspaper refuse to take ads in a borderline neighborhood, if I want to mark it "Colored".

Consequently, it makes the prices of any house that negroes buy, 40 to 60 per cent higher because of the unavailability of such houses, and further the fact that it is almost impossible to, by advertising them, to let them know of the very few that do exist or are available.

The Court: The Court thinks any isolated case would not be sufficient to make that acceptable.

Mr. Urciolo: I will state it general terms.

By Mr. Urciolo:

Q. During your course in the real estate business, have you found that the Evening Star would not take an ad if you wanted to mark that ad "Colored", in a borderline neighborhood?

A. I have.

The Court: Wait just a minute. Are you seeking to contradict the witness who was just on the stand?

Mr. Urciolo: No, Your Honor. This is corroboration—corroboration.

The Court: Objection sustained.

By Mr. Urciolo:

Q. Mr. Wills, do you sell property to both white and colored?

A. I do.

506 Q. Mr. Wills, in your experience as a real estate broker—

Mr. Gilligan: What is your experience? If Your Honor please, I have not heard it yet.

By Mr. Urciolo:

Q. Are you a member in a brokerage, and licensed?

A. Licensed real estate broker, sir.

Q. How long have you been in the real estate business?

A. Since 1940.

Q. Where were you formerly employed?

A. Thomas W. Parks Company.

Q. You are exclusively engaged in the real estate business?

A. That is right.

Mr. Urciolo: Is that sufficient qualification?

Mr. Gilligan: So far as I am concerned, yes. I haven't anything further to say.

By Mr. Urciolo:

Q. Now, Mr. Wills, as a general rule, do negroes pay more for property or do whites pay more?

Mr. Gilligan: If Your Honor please, I object to that type of question. If he would confine his questions to questions about the Bryant Street, I would be happy for him to do it.

The Court: Sustained.

507 By Mr. Urciolo:

Q. Have you sold any property, Mr. Wills, in Le Droit Park, First Street, or the Bloomingdale section?

A. I have.

Q. You are acquainted with the neighborhood?

A. I am.

Q. You would be able to describe the neighborhood if I asked you?

A. I would.

Q. Now, then, I will put this question to you: If there were a house for sale in Bloomingdale, this Bloomingdale section or Le Droit Park,—who as a general rule would have to pay more for property, a negro buyer or a white buyer?

A. A negro buyer.

Q. About how much more?

A. Approximately 30 per cent more.

Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Gilligan:

Q. Just to make sure of what you mean, Le Droit Park is entirely colored, is it not?

A. Well, I wouldn't say entirely colored.

Q. How much colored?

A. Approximately two-thirds colored.

Q. Le Droit Park?

508 A. Yes.

Q. If I wanted to buy a house on let's say Fourth Street, between V and W, or Elm, would I have to pay more for it than a negro, today?

A. No.

Q. Would the negro have to pay more for it than I would?

A. Yes.

Q. Why?

A. There is a demand for property there, as far as the negro is concerned; there is no demand, I presume you are a white person—there is no demand as far as a white person is concerned, and the real estate market is more or less guided by the law of supply and demand.

Q. I don't know whether that answers me or not. I am a white man, let's say—whether I am or not. I wanted to buy a property on Fourth Street. Would I have to pay more for it than a colored man would have to pay?

A. You would have to pay more for it than a colored man.

Q. Right in this case?

A. I am talking about just in your case.

Q. You have a house for sale?

A. Right.

Q. Pursuing that—I come to you and I ask you about the purchase of that house. Would you sell it to me in
509 the first place?

A. Well, I sell to anybody that has the money to
buy.

Q. Would you sell to me on Fourth Street, between V and W?

A. Yes, I would, if you wanted.

Q. If I could get the property, and you would sell it to me?

A. That is right.

Q. Are you still connected with the Thomas W. Park Company?

A. No, sir, I am in the real estate business for myself.

Q. When did you leave Mr. Park?

A. I think it was in 1942, or the late fall of '41.

Q. You are a colored-man yourself, are you not?

A. Well, I don't know.

Q. You have some negro blood?

A. Well, I wouldn't say that.

Q. Did you ever sell any houses in the 100 block of Bryant Street?

A. No, I have never sold any houses in the 100 block of Bryant Street.

Mr. Gilligan: That is all.

510 Redirect examination.

By Mr. Urciolo:

Q. Mr. Wills, let us take a house in the 20- or 2100 block on First Street. Would a negro buyer have to pay a larger price for a house on First Street than a white buyer?

A. Negro buyers would have to pay more.

Q. About how much more?

A. As I said before, the overall percentage which I based it on is approximately 30 per cent more.

Mr. Urciolo: Thank you.

Mr. Gilligan: I live in the 2300 block of First Street and my house is covered by a deed covenant as are all other houses in there. Would you sell that house in that block—

Mr. Houston: How far down?

Mr. Gilligan: I said the 2300 block.

Would you sell a house in that block to a negro, if you thought he wanted to buy it?

The Witness: Do I have to answer that?

The Court: Yes.

The Witness: Yes, I would.

Mr. Gilligan: In other words, you don't believe in these covenants?

The Witness: Being a covenant—I don't believe in a covenant.

Mr. Houston: I have not had my opportunity at all.

511 Mr. Gilligan: I thought you had.

The Court: I think it is your turn now.

Cross-examination.

By Mr. Houston:

Q. Mr. Wills, negroes very seldom are able to buy in these borderline neighborhoods until the property is run down, as far as whites are concerned; isn't that true?

A. That is true, sir.

Q. Is it also true that usually a neighborhood which has formerly been a completely white home owning neighborhood changes to at least partially a rental neighborhood before negroes get a chance to buy?

A. Yes, the whole picture, as far as the real estate market is concerned in Washington, tends to go through a change. First, there is full ownership, secondly, there creeps in renters, tenants; the tenants, in due time, become very undesirable and tear up the property or depreciate the property to such extent until the owners say, "Well, the only way that I can get whole, I will sell it to colored."

Q. In other words, before colored are able to buy, the property is usually one that has lost its desirability as a white home-owning neighborhood?

A. Yes.

Q. Now, when a negro buys, does he buy mostly for speculation or for personal home-owning occupancy?

512 A. Well, I would say 95 per cent of the negroes, the people that I sell to, buy for home ownership.

Q. Would you say that your experience is typical of brokers handling property, selling property to negroes?

A. I would say it is typical.

Q. Would you say whether the purchase by negroes for home ownership depreciates a neighborhood, or what?

A. It appreciates the neighborhood, because, first of all, when any owner—put it that way—moves into a property, naturally, and he lives in it, he is going to do everything to make his home look better than the one next door, and the neighborhood gradually goes back to its status quo, the way it originally was when the original white ownership had gone through the whole neighborhood.

Q. When a neighborhood ceases to be a home-ownership neighborhood and becomes a rental neighborhood, is it your experience that the owners spend as much money for repairing as they did when it was a home-ownership neighborhood?

A. They spend more money when it becomes a rental neighborhood.

Q. Well, now, is that for fixing up the property or simply maintaining it in habitable condition?

A. Maintaining it in a habitable condition.

Q. Why do they have to spend more money?

513 A. Well, naturally a tenant doesn't take as much care of property as the owner would; a tenant doesn't go out and mow the lawn or replace bricks in the wall, or maybe some things inside there—lets the kids tear the walls, and all that sort of stuff, and naturally it depreciates the property.

Q. So that although they don't spend more in improving it, they just spend money in maintaining it?

A. That is true.

Mr. Gilligan: If your Honor please, I only object because Mr. Houston is only putting this witness—

The Court: That is cross examination.

By Mr. Houston:

Q. If it is a fact that owners spend more money after they rent the property, on it, than they did when they lived in it themselves, is it the desire on the owner's part to improve the property, or what?

A. No, it is a desire on the owner's part to keep the property in a livable condition.

Q. Now, what about obsolescence? Has obsolescence already set in at the time the property ceases to be a home-ownership neighborhood and becomes a rental neighborhood?

A. Has it set in?

Q. Yes.

A. It has.

Q. Would you say that obsolescence is greater in a rental neighborhood than in a home-ownership neighborhood, or vice versa?

514 A. I would say greater in the rental neighborhood.

Q. Now, would you be willing to say what would be the ordinary limit, or top limit, where you would have a wide top limit of value, where you would have a wide negro market? In other words, I am not talking about an exceptional house that a man might pay \$50,000 for, I am talking about what you would regard as the ordinary top limit

where you would get a wide negro market in Washington?

A. The top price a negro would pay for a house?

Q. Not the top price a negro as an individual would pay—I mean, if you had a guiding figure on the market for sales, what would you say would be the top limit they could—where there would be a wide demand,—the general ability of the negroes?

A. I would say between \$9,000 and \$10,000.

Q. In other words, \$10,000, you have a wide negro market; is that true?

A. That is right.

Q. Now, do you know that neighborhood of the 100 block of Adams Street and the 100 block of First Street?

A. I do.

Q. And the 100 block of Bryant Street?

A. I do.

Q. That property—did it have—does it have a greater—is there a greater demand for it by the whites or by colored?

A. Well, there is a greater demand by colored, because it is in the proximity of Howard University and most of the colored activities are centered around that section.

Q. Is there a large negro apartment house at the corner of Second and V?

A. There is a large negro apartment house there, plus several other apartments below that.

Q. And, are there—or, is there a government dormitory for men at the corner of Second and Elm?

A. There is one at Second at Elm, and one on Third Street; for women.

Q. In your opinion, where does the white neighborhood start in that area—what is the dividing line?

Mr. Gilligan: I object to that question. I don't think that he can determine where the white areas stop.

The Court: He may answer.

The Witness: Well, it is my opinion that North Capitol Street has been more or less the dividing line, as far as the colored and whites are concerned, in that area.

By Mr. Houston:

Q. Well, would you say—what about First Street west, what has that been considered?

A. Negroes.

Q. Has that been considered a white or negro neighborhood?

A. It has been considered a negro neighborhood.

Q. Would you say that that is true all the way up to Bryant Street and through Bryant Street?

A. I would say so.

Q. Can you tell the race of the real estate operator as to whether, in the District of Columbia, as to whether he sells to white or colored?

A. No.

Mr. Houston: I think that is all.

Cross-examination.

By Mr. Gilligan:

Q. I would like to begin at Rhode Island Avenue and North Capitol, and go all the way north.

In your opinion as a real estate man, an expert who knows what it is all about, go up as far as you can go on North Capitol Street, and all of the intersecting streets from Rhode Island Avenue up to Channing, and tell me how many negroes live in that particular territory?

A. Well, now, I can't tell you right offhand just how many negroes are in there, because you don't know who lives next door to you, yourself. I don't know. You don't know.

Q. You are comparing yourself with me; is that it?

A. No, I am not comparing myself with you.

Q. I thought you said you were a very active real estate man who knew all about that.

A. I do.

Q. You said that North Capitol was the dividing line. If it is the dividing line, you must know whether there are negroes there between North Capitol and First, from Rhode Island as far north as you can go.

A. Well, I would say that the general neighborhood, seemingly, from its outside appearance, is white from Rhode Island Avenue up through—up to Michigan Avenue.

Q. From its outside appearance. So that you don't know of any negroes living in that territory?

A. No, I don't know of any cases, isolated cases of negroes living in there.

Mr. Gilligan: Just one other question—

Mr. Houston: Let him finish.

Mr. Gilligan: If he has not finished—go on.
 The Court: Had you finished your answer?
 The Witness: Yes, sir, I had finished.
 The Court: All right.

By Mr. Gilligan:

Q. You said you were more or less familiar with this 100 block of Bryant Street?

A. I said in that area, yes, sir, from First Street over.

Q. I am asking you about the 100 block of Bryant Street.

518 A. Yes.

Q. Are the houses kept in good condition in the 100 block of Bryant Street?

A. Well, those near Second Street—the last time I was through there—seemed to have been in very good shape.

Q. How about those from First Street down to about 152?

A. Very ragged.

Q. Very ragged?

A. Yes.

Q. When were you through there?

A. I go there on an average of two, maybe three times a week.

Q. How about 116 Bryant Street—how does that look?

A. I can't carry a picture of the house in my mind, you understand, and why?

Q. Just the general conditions.

A. Yes.

Q. If I told you that from 154 down to the end of Second Street were all occupied by negroes, for example, is that the reason why it looks fine down there?

A. Pardon?

Q. If I tell you that 154 to Second Street, 154 Bryant down to Second Street, are all occupied by negroes, is that the reason they look bright?

A. I don't know whether they were occupied by negroes; you asked me a question about the general appearance of the houses, that is what I gave you.

Q. Can you tell me where the general appearance deteriorates? You said toward Second Street from First, but where does it begin to change so that it is not so good?

A. I would say approximately 40 per cent of the block down this way (indicating); 60 per cent back toward First Street.

Q. Forty per cent is fine?

A. Yes, very nice looking houses, seem to be kept very nicely.

Q. Sixty per cent doesn't look very good?

A. That is right. I know nothing about the percentage of occupancy.

Q. In which ways don't they look good?

A. Well, the outside is not painted, seems to be kept in a very unkempt condition. After all, we don't, as a real estate broker or appraiser of property, have time to go in every house to see whether or not the outline of the rooms is the same; when we take a look at the outside, if the outside is good, we presume that the inside is in good condition. Therefore, any appraisal we give is based upon the outside condition of the property.

Q. Have you appraised any houses?

A. I have.

520 Q. Which one—you have not?

A. I have appraised property here in Washington, yes.

Q. I mean, in the 100 block of Bryant?

A. I don't know whether I have or not.

Mr. Gilligan: No further questions.

Further redirect examination.

By Mr. Urciolo:

Q. Mr. Wills, let's take the area of Rhode Island Avenue, north, and west of First Street. Is that colored, or white, generally?

A. That is predominantly colored.

Q. But east of there is what?

A. That is right.

Q. Is what? What is it, east of First Street?

A. East of First Street, it is my general opinion that it is predominantly white.

Mr. Urciolo: That is all.

Mr. Houston: There is one thing I should like to correct in the record. I would like to do it now because we want to be in the very best possible shape.

521 In the complaint in these cases, paragraph 2 states—no, paragraph 1:

“Plaintiffs are citizens of the United States.”

I would like to request that the plaintiffs be amended to show that except for Victoria De Rita,—I think the same applies to 29,943. Once again I request that the plaintiffs be amended so as to say “except for Victoria De Rita.”

Mr. Gilligan: I would be willing to amend that to “except as to Victoria De Rita, who is an applicant for citizenship.”

Mr. Houston: I have no objection to making that statement of the facts. I wanted them recited.

Mr. Gilligan: I think that is all for us, if Your Honor please.

The Court: Very well.

Mr. Urciolo: If Your Honor please, at this time I think that we are making those changes, we may as well make a change in paragraph 1 of 29,943, where it states that plaintiffs are residents of the District of Columbia, as to Constantino Marchegiani and Mary M. Marchegiani, as the testimony brought out that that was not true.

The Court: This was filed in July. Are you sure that they were not residents of the District at that time?

Mr. Urciolo: No, I am not sure.

Mr. Gilligan: They were residents at that time.

Mr. Houston: You were going to call Mr. Rush, I think.

522 Thereupon CHARLES J. RUSH was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Mr. Rush, will you please state your full name?

A. Charles J. Rush.

Q. Where do you work, Mr. Rush?

A. Executive Secretary and Treasurer of the Washington Real Estate Board.

Q. How long have you been so employed?

A. Since October, 1932.

Q. Mr. Rush, how many members are in your organization?

A. The Washington Real Estate Board has 201 active members, comprising some 450 licensed real estate brokers in the District of Columbia, and, about 1,515 associate members—they are salesmen in the employ of the members.

Q. Now, to the best of your knowledge, Mr. Rush, is any negro a member of your organization?

A. No, sir; they have their own organization, the Washington Real Estate Brokers' Association.

Q. If a negro applied for membership in your organization, would you accept him?

523. A. That is a question I cannot answer, because the Board of Directors is the deciding factor.

Q. Have any applications ever been made?

A. Not to my knowledge.

Mr. Gilligan: If your Honor please, I would like to object to this line of questioning unless the attorney expects to connect it up in some way with these two cases.

Mr. Urciolo: I withdraw the question.

The Court: All right.

By Mr. Urciolo:

Q. Mr. Rush, what is the policy of the Washington Real Estate Board as to selling houses to negroes in a borderline area?

A. The only way I can answer that—our rules provide that in cases of doubt, members should obtain the advice of our Public Affairs Committee.

Q. Would you explain that further? I don't understand you fully.

A. The committee has been set up by the Board, and a new committee is appointed each year to contact—to answer questions that are submitted by members as well as non-members as to the sale of a property in a doubtful area.

Q. In other words, do I understand you to say that the committee will advise an applicant, whether he may sell that property to a negro, or not?

524. A. We advise our members that they cannot sell or can sell to the others. You have called, many years ago, and we have advised you that after inspection of the area, consultation with the Citizens' Group in the area—or the property owners in the area—that the property could or could not be sold without criticism.

Q. Now, Mr. Rush, when you consulted with the Citizens' Groups, were any negro citizens groups ever asked to join in the discussion?

A. I cannot answer. I am not a member of the Public Affairs Committee.

Q. Mr. Rush, has your organization—have you called the Evening Star and objected to their advertising certain houses for negroes in white neighborhoods?

A. We have contacted the Evening Star and have said that we have been requested by these associations—these Citizens' groups in those areas—to not to let or permit our members to sell properties in those areas.

Q. To negroes?

A. To negroes.

Q. To negroes?

A. That is correct.

Q. How about as to Jewish groups?

A. I have never had a question come up on that line by any—

525 Q. You have never called the Star asking them that they refrain from using the words "Gentiles only"?

A. That would be presumptuous on our part to ask anybody not to do anything when we do not have any jurisdiction over that. The publishers of the papers decide their policy. We do not tell them what to do.

Q. But you do tell them when it concerns negro occupancy?

A. I beg pardon; we tell them what has been conveyed to us by citizens groups.

Q. Well, if something were conveyed to you as to the Jewish occupancy, would you assume the same—would you refer the same matter to the Star?

A. I have—

Mr. Gilligan: Just a minute.

If Your Honor please, I am inclined not to object to this but I must say that I want the Court to get any information possible; but what possible bearing do the Jews have on this matter?

Mr. Urciolo: Racial discrimination, whether it — against Jews or Italians.

The Court: He may answer.

The Witness: I have stated previously that that question has not arisen.

By Mr. Urciolo:

Q. Then, my question to you was that—if the question did arise would you feel it your duty to notify the Star in the same manner that you did as to requests you have had concerning negro occupancy?

A. I can only say that when that time arises I would be advised by the committee.

Mr. Urciolo: That is all.
No, one more.

By Mr. Urciolo:

Q. Is that advice to the Star given only when there are covenants in the areas restricting the property, or whether there are covenants or not?

A. I cannot answer you on that, because I only convey the information which has been brought to me by the citizens' groups.

Q. Irrespective of restrictions or not?

A. The same thing I said before—I do not know—I am only conveying information which has been sent in to me.

Q. Mr. Rush, do you recall calling me several years ago and asking me to refrain from selling property to negroes in an area that was not covenanted?

A. I do not recall whether or not they were covenanted, but I do recall that after—that at that time you were a member of the Washington Real Estate Board, which membership was later terminated when you went to Italy, and we asked you to abide by the Board's rules.

527 Q. In other words, Mr. Rush, your organization attempts to enjoin the sale to any negro by any person whether he be a member of your Board or not.

A. No, sir, you are mis-stating my statement.

Q. In other words, you would never call a real estate man asking him to please refrain from selling to negroes if he were not a member?

A. That is right.

Mr. Urciolo: No further questions, thank you.

The Court: You may have the witness, Mr. Houston.

Cross-examination.

By Mr. Houston:

Q. Mr. Rush, what do you mean by saying "policy of the Board"?

A. May I quote the By-Laws of the organization, which state the policies?

Q. Yes.

A. I beg pardon, not the By-Laws—our Code of Ethics.

Mr. Houston: May I see it?

(Pamphlet passed to counsel.)

Is this an extra copy?

The Witness: No, I have but one copy.

Our Code of Ethics, Section 5, paragraph 15:

"No property in a white section should ever be sold, rented, advertised, or offered to colored people.

528 In a doubtful case advice from the Public Affairs Committee should be obtained."

Mr. Houston: May I have that marked as an exhibit?

("Code of Ethics" of the Washington Real Estate Board was marked as Defendants' Exhibit No. 5 and received in evidence.)

By Mr. Houston:

Q. What constitutes a "white neighborhood"?

A. I cannot answer that, Mr. Houston.

Q. Where would that answer come from?

A. From the areas, property owners, covenants, occupancy—all of those things.

Q. Well, doesn't there have to be some standard? Do you mean to say that a white neighborhood varies according to whether the white people want to keep it white or not?

A. I can't answer you on that. I am not a member, simply Secretary of the organization.

Q. Can you tell me whether, for example, if you have out of thirty-some houses, say three negroes in the block, would you consider that a white area?

A. I would say that whatever the committee would happen to say, based upon the requests from the citizens, the property owners or the wishes of the citizens groups.

Q. Does the Washington Real Estate Board have any standards of its own?

529 A. No, no standards—no set rules. Each case must be decided upon its merits.

Q. How long have you been—Were you at one time a licensed real estate broker?

A. No, sir, I have never been in the real estate business.

Q. So that you don't seek to set yourself up to know anything about the cycle of depreciation or anything like that?

A. No, sir. I am Public Relations man and Executive Secretary and Treasurer, and have been doing that work for 25 years.

Q. As Public Relations man, you have no standards of your own, but simply transmit what is handed to you?

A. Yes, sir.

Q. Do you know anything as to whether the real estate—What is the national organization?

A. The National Association of Real Estate Boards, is an affiliation of real estate boards throughout the United States. We have grown so rapidly the past few years that we don't know whether we have 675 boards or 700.

Q. Do you know whether in studying this question of negro ownership and occupancy, recently there has been a pronouncement about negro areas, in purchasing of homes?

A. Yes, the National Association of Real Estate Boards has urged financing—if I may just proceed a moment
530 along that line?

Q. Go right ahead.

A. For many years, you know that it was impossible for the negro to get financing so that he could build his home, that he could purchase a home on a fair, modest down payment. When FHA became the insuring agency for the Federal Government, and the building of homes, we supported that as a national organization, because we saw that through that there would be a means of building homes for people in the lower income groups, not only the negro race, but also the white with a lower income.

Our national organization has sponsored this past year—I am sorry I don't have the material with me—but it has urged the building of homes, and our past national president, Mr. N. C. Farr, of Chicago, has built a very large project in Chicago. Others throughout the United States

are now building either for rent or for sale, and that is also being done here in Washington. There are several new developments under construction now which were not possible in the past, because the lending agencies did not make it possible for us to build under the financing which was then available.

Pardon me, for being so long, Judge.

By Mr. Houston:

Q. Incident to that, was there a statement that negro home purchasers were good credit risks?

531 A. Yes, that was found as a result of a national survey and, off the record here for a moment, we can say that in Washington, hundreds of properties here are occupied by negroes and have been found to be highly desirable by investors, by property management men, and so on.

Q. So that it is not true as a general statement that negroes coming into neighborhood depreciate the same?

A. I am not answering on that, because I am not an authority on depreciation. I am talking now about housing being built for the negro race.

Q. And it has been found that hundreds of negroes are—hundreds of negro properties are desirable properties from the standpoint of investment, and the standpoint of almost any standpoint?

A. That is right.

Mr. Houston: That is all.

Mr. Gilligan: One or two questions.

Cross-examination.

By Mr. Gilligan:

Q. I think you know Mr. Urciolo, do you not?

A. Yes, sir.

Q. Is he a member of the Real Estate Board now?

A. No, sir.

Q. Has he applied since he returned from Italy?

A. No, sir.

532 Q. If I should say to you that Mr. Urciolo openly stated that he does not believe in restrictive deed covenants—

Mr. Urciolo: Racial covenants.

By Mr. Gilligan:

Q. (continuing) — restrictive deed covenants or racial covenants, restrictive deeds on races, and he would so state on his application, would you admit him to your membership?

A. I cannot answer for myself. I am not the Board of Directors, but I do know, though, that our organization believes in upholding the law respecting all terms, deeds or covenants, restrictions and so forth, or what have you.

Q. So that you personally would not pass on his application?

A. I have no jurisdiction, Mr. Gilligan.

Mr. Gilligan: That is all, thank you.

Re-direct examination.

By Mr. Urciolo:

Q. One further question along the same line, Mr. Rush: Do you recall the Lily Pons Project out here, Central Avenue way?

A. Vaguely, yes, sir.

Q. That was built for white people, was it not?

A. I assume so, built by the National Capital Housing Authority. That is the former Alley Dwelling Authority, under Emergency Housing, but what its occupancy was to be I do not know, but I can assume with you that it was for white occupancy.

Mr. Gilligan: If Your Honor please, I presume that Mr. Urciolo is going to connect that up in some way with this case.

The Court: Well, the witness says he doesn't know.

By Mr. Urciolo:

Q. But, you are acquainted with the development, the Lily Pons Project?

A. I have been in the development, yes, sir.

Q. When you went in there, Mr. Rush, did you see whether it was occupied by white or colored?

A. It was then in a pleasant state of highly incompleated housing, so I do not know.

Mr. Urciolo: No further questions.

The Court: Is that all, gentlemen?

534 Thereupon LEONARD S. HAYES was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Will you please state your full name?

A. Leonard S. Hayes.

Q. Mr. Hayes, where are you employed?

A. I am employed at the Administrator of Rent Control's office.

Q. In what capacity?

A. Examiner.

Q. Mr. Hayes, did you bring with you the records for 130 Adams Street and 144 Bryant Street?

A. Mr. Urciolo, I have with me the records for 144 Bryant Street. Some of these addresses which have been subpoenaed, however, show no record on these addresses. I have a record on 135 Adams, 140 Adams, 142 Adams, 144 Bryant, 134 Bryant and 118 Bryant.

Q. Would you please state to the Court the ruling 535 on the case of 144 Bryant Street?

Mr. Houston: Get the case number.

The Witness: Repeat the question, please.

By Mr. Urciolo:

Q. 144 Bryant Street.

Mr. Gilligan: If Your Honor please, I would like to know what you mean by the "ruling"?

The Court: Do you mean the ruling of the Administrator?

Mr. Urciolo: Yes, Your Honor.

Mr. Gilligan: On what subject?

Mr. Urciolo: On an application for rent ceiling.

The Witness: What address, Mr. Urciolo?

The Court: 144.

The Witness: Reading from the record here (consulting documents), "The legal maximum rent ceiling for 144 Bryant Street, Northwest, is \$35 per month."

By Mr. Urciolo:

Q. Did the applicant, Mr. Hayes, ask for an increase?

A. The applicant did ask for an increase, asked for an increase of \$35 a month to \$65—a \$30 increase.

Mr. Houston: What is the date of the ruling?

The Witness: The examiner's order was issued February 2, 1944, effective February 13.

By Mr. Urciolo:

Q. And what was the ruling, please?

536 A. The ruling was that the rent remain at \$35 a month which had been charged in the past.

Q. Will you please take the record for 118 Bryant Street? Now, what was that record, Mr. Hayes?

A. That is Case No. 11906.

Mr. Houston: What was 144? I didn't get that?

The Court: \$35.

Mr. Houston: The case number.

The Witness: The case number was 16176.

As to the 118 Bryant Street, Northwest, the rent on January 1st, 1941, was \$40 a month. There was a request to increase the rent to \$65 a month; as a result of a hearing an order was issued setting the rent at \$40 a month, which had been charged in '41.

By Mr. Urciolo:

Q. Do you have the record for 134 Bryant Street?

A. Case No. 11907, the rent ceiling on January 1st, '41, was \$48 per month. There was a request to increase the rent to \$65. On June the 23rd 1943, an order was issued setting the rent at \$48, which had been charged in '41.

Q. Mr. Hayes, you were the examiner in those three cases, were you not?

A. Yes, sir.

Q. Do you recall whether these defendants were white people or colored people?

537 A. My recollection is that they were white.

Mr. Gilligan: "These defendants"—what does he mean?

The Court: Did you say defendants or tenants?

Mr. Urciolo: I said "defendants". I was the plaintiff in those three cases.

The Witness: Our terminology is different.

The Court: What do you mean,—applicant?

The Witness: Petitioners or respondents.

By Mr. Urciolo:

Q. The respondents were white people?

A. That is my recollection.

Mr. Gilligan: I think you added that the petitioner was yourself, Mr. Urciolo?

Mr. Urciolo: Yes.

By Mr. Urciolo:

Q. Now, Mr. Hayes, will you please take the cases—the case of 130 Adams Street?

Mr. Gilligan: Now, if Your Honor please, I don't see where that is pertinent, 130 Adams Street. That is certainly not before the Court.

Mr. Urciolo: Your Honor, the reason I am making that is as follows:

I want to show the Court that the rents were \$35, \$40 and \$48; then, I am going to take three houses on Adams Street, which are occupied by colored and ask him to state the rents approved on those; in other words, to show the great discrepancy as to the rentals paid by white and by colored in order to establish—contradict the statement in the complaint that negroes—the presence of negroes—will be depreciative and ruinous of the property in question.

The Court: What block of Adams Street?

Mr. Houston: 100 block.

Mr. Urciolo: 100 block, immediately back of Bryant Street.

The Court: He may answer.

By Mr. Urciolo:

Q. 130 Adams Street, Mr. Hayes.

A. As I told you before, Mr. Urciolo, our office has no record of 130. We have a record of 140, 135, 132 and 142 Adams.

Q. Well, Mr. Hayes, please state to the Court the case No. 135 Adams Street.

A. This particular form (referring to yellow sheet in his hand) has no number, Mr. Urciolo. It is an application for a rent ceiling on a place that was never occupied, not occupied on January 1st, 1941. In our office that is called a "Petition No. 39 form".

Q. Who was the petitioner?

A. Mr. Raphael G. Urciolo.

Q. And what ceiling was set on the house, Mr. Hayes?

539 A. The present rent on the house is \$75 a month.

Q. Has that ever been modified?

A. Never been modified by our office, no ceiling has been set, however.

Q. Now, 140. Please get the record out for 140 Adams Street.

A. All right, sir, I have that.

Q. Who was the petitioner there?

A. A Mr. Charles M. Connor.

Q. And what ceiling was set?

A. No ceiling has been set. \$62.50 per month is being collected.

Mr. Houston: How much?

The Witness: \$65; I am sorry.

By Mr. Urciolo:

Q. \$65 is being collected?

A. Yes, sir.

Q. Please get the record out for 142 Adams Street.

A. All right, sir.

Q. What is the case number?

A. There is no case number.

Mr. Gilligan: What?

The Witness: There is no case number. This is a petition of a Mrs. Letty G. Martin, to establish rents on individual rooms in the house. In her petition she sets forth
540 that the rent per month for 142 Adams Street, North-west, is \$62.50 per month.

By Mr. Urciolo:

Q. Mr. Hayes, did you state whether there was a ceiling established at \$62.50 per month?

A. Our record shows no such establishment. I did check the record.

Mr. Urciolo: Your Honor—

The Witness [interposing]: It may be, by operation of law, there is a ceiling. I don't know what the situation is. The only record in our office is this rooming house schedule.

Mr. Urciolo: May I be excused for a moment, Your Honor?

(Discussion off the record.)

By Mr. Urciolo:

Q. Do you have the record for any other house on Adams Street, or Bryant Street?

A. No, sir, nothing except the application for individual rooming,—application for rents—rents for individual rooms at 132 Adams Street, Northwest. The applicant sets forth that she is the owner of the premises and there is no ceiling on that house.

Q. Now, Mr. Hayes, you have been an examiner since the inception of the Office of Emergency Rent Control, is that correct?

A. That is correct, sir.

541 Q. Roughly, Mr. Hayes, how many cases a day do you hear?

A. I imagine the average is approximately ten or twelve cases a day. Well, by "case," I mean individual housing accommodations. They may be rooms or private dwellings.

Q. Consequently, Mr. Hayes, you have heard thousands of these cases?

A. Yes, sir.

Q. And, Mr. Hayes, having heard thousands of these cases, can you state—answer only if you can honestly state—whether negroes pay more rent than white people for similar accommodations?

A. I can't answer the question categorically. I could answer with some explanation.

Q. Well, answer to the best of your ability.

A. From my observation of various cases I have had, I have found that where negroes are going into an established white neighborhood, the rent charged the negroes is usually higher than what the whites in the neighborhood are paying.

Q. About how much higher? Would you say ten per cent, sixty per cent, thirty per cent?

A. My guess would be that it is approximately from \$10 to \$20 a month higher.

Q. Ten to twenty dollars per month higher?

542 A. Yes. I might say, if it would help the record any, I think I ought to state in order to have my position clear, that usually when there is the increased rent to negroes, there is a difference in the housing accommodations. By that, I mean in most cases you find that the house rented to the negro had been renovated or had in some way been rehabilitated. Generally the whites are living in a house that is not in as good condition as the negro's.

Q. Mr. Hayes, is there any method by which you can know if an applicant is white or colored?

A. Our form has no such designation. The only means I can use to determine is by actual observation when the persons come before me at the hearing.

Q. I call your attention, Mr. Hayes, to the yellow form. Do you have a yellow form with you?

A. No, sir.

Q. Do you recall whether the yellow forms have, as one of the questions to be filled out by the applicant, whether he is negro or white?

A. We have a great number of forms. We have a yellow form which is an apartment house schedule. It merely shows what the particular apartment was renting for on January 1st, 1941, and the form, according to my recollection, does have white and colored distinguished.

Q. So as to apartment houses, you can tell whether the applicant by his own statement is white or negro?

543 A. Yes, sir.

The Court: Well now, did I understand you? I thought you said that it showed who was the occupant in 1941.

The Witness: No, sir—

The Court: It also shows the color of the applicant?

The Witness: The form relates to what the situation was on January 1st, 1941; and also in the form there is a question as to whether the occupancy is white or colored as of that date.

Mr. Houston: Is that an apartment house, or general?

The Witness: Sir?

Mr. Houston: Is that an apartment house, or general?

The Witness: That is specifically for apartment houses.

Mr. Houston: Not for the ordinary Form 39?

The Witness: Not for the ordinary form 39, no, sir. We have a particular form that is limited only to established apartment houses where there are four or more apartments in a building, and that is the form where the question is asked as to whether the occupancy is white or colored.

Mr. Houston: Outside of that particular form—Your Honor, I am simply speaking at this time to clarify the record, if I may.

Outside of that particular, there are no forms in the Office of the Administrator of Rent Control which indicates 544 the color of either the respondent or petitioner, or the color of an occupant or the color of the owner?

The Witness: That is my recollection, Mr. Houston. I believe we have about 60 forms, but my recollection is that no other form asks that question.

Q. Now, Mr. Hayes, returning to the case of 144, 118 and 134 Bryant Street, do you recall when I had those hearings before you, my calling your attention to the fact that the colored people on Adams Street were paying a much higher rental?

A. Your cases were heard back in 1943, Mr. Urciole. I can't say that I recall your conversation, but I know as a fact that at that — there were negroes on Adams Street that were paying higher rents than the particular applicant in your case was paying on Bryant.

Q. How much more?

A. They were paying \$62.50 and \$65; that is my recollection.

Q. And the Bryant Streets were paying —

A. \$40 and \$48.

Q. And —

A. Whatever the other one was.

Q. Now, Mr. Hayes, what was your answer to me, to my statement that it was outrageous for houses on 545 Bryant Street, which were far better than the houses on Adams Street, and yet were rented for \$30 to \$35 less, the Bryant Street houses being rented to whites, the Adams Street houses being rented to colored?

A. I don't know. I can't recall any conversation two years ago.

Q. I will try to refresh your recollection.

Answer yes or no; take your time.

The Court: You are not trying to impeach your witness, are you, Mr. Urciolo?

Mr. Urciolo: No, Your Honor. I said "Answer yes or no; take your time."

The Court: What is the purpose of this, unless it is to impeach him?

Mr. Urciolo: I am merely trying to refresh his recollection, to ask him if he recalls making this statement:

By Mr. Urciolo:

Q. Do you recall, Mr. Hayes, making this statement to me—that the negroes always pay higher rentals than whites and did so in 1941?

A. No, sir.

Q. Do you recall, do you have the records Mr. Hayes, of the decision in the Municipal Court of my appeal in your cases?

A. Just a minute, I will see (consulting files).

These records that I have are only the records of the Office of the Administrator of Rent Control, and go as far as the Administrator's decision. I see no copy of the opinion of the Municipal Court—no notation in the record—just a minute; I think I have it.

Q. I am referring to the Bryant Street cases.

A. I have the Court decision in Case No. 56, Rent Appeal No. 56 from the Municipal Court.

Mr. Gilligan: What is that house?

The Witness: It is the house occupied by Benjamin Harding and Charles G. Huting, whatever address that is.

Mr. Gilligan: What address is that?

The Witness: Our record shows that it is 118 Bryant Street, Municipal Court order does not show what address it is; it says "In the opinion of the Court that is the address. It is 118 Bryant Street."

By Mr. Urciolo:

Q. And your decision was affirmed?

A. The decision of the Administrator was affirmed, the Administrator having affirmed my decision.

Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Houston:

Q. Mr. Hayes, you are also a member of the bar?

A. Yes, sir.

Q. Can you give me—You have stated that usually the negro's property had been renovated and that is the
547 reason, one of the reasons, why the rent ceiling is raised?

A. I can only give you what I have found to be my experience in the cases that I have handled. I have had a number of cases involving whites moving into—colored moving into an established white neighborhood. One of the bases for the increase has been capital improvements made to the property, usually in a great number of cases I have actually inspected the houses to ascertain the actual extent of improvement.

Q. Pardon me—Go ahead.

A. I have found, from my observations, that the colored pay more than the whites in that particular neighborhood, but that a good number of the cases show that the house occupied by the negro has been rehabilitated.

Q. Well, now, that is true—what do you call an established white neighborhood?

A. My term is very loosely used, but a neighborhood which is predominantly white.

Q. All right. Now, isn't it true also, that in a neighborhood which is either mixed, or where there are whites living in a negro neighborhood, that your statement applies to houses, I mean to say wherever negroes move into a house occupied by whites, the houses are usually fixed up a little bit for a negro, and higher rent charged, regardless of whether it comes into an established white neighborhood or a mixed neighborhood, or what?

548 A. Well, I don't quite understand your question, Mr. Houston. We have other bases upon which we increase the rents.

Q. No; you misunderstand me. I am simply trying to explore your statement as to an established white neighborhood and find out whether—

A. (Interposing:) The capital improvement is the base for increase in rent, no matter where made.

Q. Yes, so that what you are saying applies to when a negro has moved into a house formerly occupied by whites, no matter whether an established white neighborhood or mixed community or whites living in a predominantly negro neighborhood, that would still be true?

A. I would say that it would be.

Mr. Houston: I have no further questions.

Cross-examination.

By Mr. Gilligan:

Q. The reason for the action taken by your office in these houses on Bryant Street, keeping the rents down to \$35 and \$40 and \$48 was that they were the rents that were being charged on January 1st, 1941 for the same houses; is that not correct?

A. Just a minute, please. I will have to go back to my order (going through file). The rent that we established as a legal maximum ceiling was the rent that was
549 being collected as of January 1st, 1941.

Q. That is the law, is it not?

A. Yes, sir. Of course, if there was a proceeding, if there was grounds established, the rent could have been increased.

Q. If there were improvements put on the property subsequent to January 1st, 1941, that made it a great deal more valuable, you people would take that into consideration?

A. Yes, sir.

Q. In these three houses that Mr. Urciolo called to your attention, on Bryant Street, was there any improvement, or improvements put on them that might, despite the improvements that might be put on them—did you still keep the rent down to January 1st, 1941?

A. We found no such improvements.

Q. So the rent ceiling was kept the same as on January 1st, 1941, because that was the law?

A. Yes, sir.

Q. And on Adams Street you spoke of several houses at \$65 a month, 142; \$65.50 a month, 135; \$75 a month,—those rents were allowed because of the fact that on January the first, 1941, they were renting, or being charged for those properties, or improvements had been made to them of such nature that the increase was justified?

A. Mr. Gilligan, I only handled the cases on
550 Adams, and I can't say why they were so fixed, except
that in investigating the official record of the office,
I found them that way.

Q. Let me put it this way: Had there been no improvements made on the house, your office would not have allowed, or have been allowed under the law, to increase the rent over what was being paid on January 1st, 1941?

A. If you were to include on that, "or other basis," I would say yes.

Q. What are the other bases?

A. Peculiar circumstances, as of January 1st, 1941, plus the fact that comparable property rented for more, increase in the cost of operation and maintenance,—I think that those three would probably cover it.

Q. Your office doesn't make any distinction under this law as to whether a person who is applying is colored or white?

A. No, sir, we do not.

Q. Or whether the tenant in the house is colored or white?

A. No, sir.

Mr. Gilligan: That is all. Thank you, Mr. Hayes.

Mr. Houston: I would like to ask a few more questions on that.

551 Further cross-examination.

By Mr. Houston:

Q. You didn't handle the four cases on Bryant Street yourself?

A. Yes, sir.

Q. Did you have occasion to go and make personal inspection of the premises?

A. No.

Q. So that your decision was made from the testimony and not from personal inspection?

A. That is correct.

Q. And you do know what actual condition the houses on Bryant Street that you handled were in, or was in?

A. I know what they testified they were in; I know what both parties testified they were in.

Q. Now, do you know what the tenant, respondent, testified they were in?

A. I will see if my notes are in here. When I say I know,

I mean that it is my procedure to take notes at the hearing and when it comes time to make a finding, I use my notes and make a finding. I don't have my notes here, but I think a statement of evidence was prepared; just a minute (looking through documents).

In answer to your question, Mr. Houston, the only thing I can say is—there was some evidence put into the
552 record that the petitioner had spent \$200 on the premises.

Q. No testimony about the condition of the premises by the respondent?

A. The record doesn't show it.

Q. Does it indicate whether 118 Bryant Street was a three-story house or not?

A. Two and a half story brick dwelling, with three rooms on the first floor, and three rooms and bath and porch on the second, and a very large room on the third.

Q. On Adams Street, does the record indicate whether those houses, the records which you have, are two-story or three-story houses?

A. The record indicates that 140 Adams,—that is a two-story house.

Q. And the others?

A. The record indicates 135 Adams Street is two-story.

Q. I didn't hear you.

A. Two-story.

Q. 140 and 142, do you have those?

A. I have 142 and 132.

Q. All right.

A. The record indicates 142 is a two-story house, and that 132 is also a two-story house.

Q. In other words, all the houses you had on Adams
553 Street are two-story?

A. Those houses I just gave are two-story; yes, sir.

Q. Would you go to the other houses on Bryant Street and tell me whether they are three-story or not?

A. What other houses?

Q. The other houses of record which you have here?

A. I was testifying about 118—that is two and a half story, brick.

Q. Two and a half stories?

A. Yes, sir. The record does not disclose what 144 is.

My recollection is that it is the same as 118, two and a half or three stories; I am not sure.

140 Bryant Street—

Mr. Gilligan: 134 and 144 were the two houses brought to our attention.

The Witness: What?

Mr. Gilligan: 134 and 144.

The Witness: 134—

Mr. Gilligan: I have the case number, if it would help.

The Witness: I have them, now.

The record does not disclose as to what 134 Bryant Street is.

By Mr. Houston:

Q. Mr. Hayes, are the Adams Street houses close enough and the neighborhood conditions sufficiently similar so that rents on Adams Street would be considered comparable rents to the rents, in making up your mind as to rents on Bryant Street?

A. In arriving at any findings that I would make, I would consider them sufficiently close enough to be comparable.

Q. And would be in the same general neighborhood?

A. Yes, sir.

555 Mr. Gilligan: I will ask this: If the houses that you have referred to on Bryant Street, 118, 134 and 144, on January 1st, 1941, had been renting for somewhat higher figures—maybe a good deal higher figures—would they under your law and your practice upon the application of Mr. Urciolo have been placed at the ceiling, at the rate which they were paying on January 1st, 1941, had no improvements on these properties, or these other items entered into the picture?

The Witness: We would not even have had to place them at the ceiling. By operation of the law that would have been the only rent collectable.

Mr. Gilligan: That is all, thank you.

556 Thereupon, FREDERIC E. HODGE was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Hodge you have already testified and I am calling you back now. I wanted to go into the matter of the neighborhood with you.

Are you a native Washingtonian, sir?

A. No, sir.

Q. A native of where, sir?

A. Lowell, Massachusetts.

Q. And in Washington how long, sir?

A. About forty-two years.

Q. Did you live in the vicinity of the 100 block of Bryant Street prior to the time you bought your house?

A. No, sir.

Q. Were you acquainted with the neighborhood at all prior to the time that you bought your house?

557 A. No, sir.

Q. Your acquaintance therefore dates from the time you purchased in 1909, and moved in?

A. Yes, sir.

Q. Now, at the time that you purchased what was the surrounding describe the surrounding area so far as being built up or not being built up is concerned.

A. The houses on Bryant Street from the alley—that is west of First Street—

Q. (Interposing:) Beginning, say, at 114?

A. 114, that is right, Mr. Houston. —to 130; were two-story and a half houses. They had been built, I understand, some years. Then, they had built six houses, two-story houses of which I occupy one, and I bought the first house when they went on sale. They were built by Martin Bray. Then Mr. Bray had purchased the land and I think he built six houses more.

Now, just a minute; let's see. There were five houses built first, and I bought the first one, and then I think Mr. Bray built six houses more.

Q. Mr. Bray built, beginning at 132, didn't he?

A. 132—that is right.

Q. Middaugh & Shannon had built from 114 to 130?

A. I think so.

Q. Then Bray built from 142 down to where? He built first from 132, 134, 136, 138, 142, in the block of six houses of which you occupied one; is that correct?

558

A. No; I think it is the other way, Mr. Houston.

There were five houses built first, and then he built the other six.

Q. He built 132, 134, 136, 138 and 140?

A. That is right.

Q. In the group of houses, one of which you occupied?

A. 136.

Q. And that was the first operation of Bray in that block?

A. Yes, sir.

Q. Now, after that, he built 142, 144, 146, 148, 150 and 152?

A. That is right.

Q. When did he build those?

A. I think he started operations, we went into our home on the 6th of October, and I think he started operations withing a month or two after I moved in.

Q. Would you say approximately around 1909?

A. The last of 1909.

Q. All right, now; the houses that had been built from 154 down to the end of Second Street—were they already there at the time you moved in?

A. They were already there. I think the first houses were built by Howenstein.

Q. Let's go back to Adams Street. Was Adams Street entirely built up in the 100 block?

A. It was.

Q. And they were built by whom?

A. I don't know.

Q. They were already built up by 1909?

A. That was built up by 1909, yes.

Q. The 2300 block of First Street, was that built up at the time that you first came in there?

A. That is where Mr. Gilligan lives?

Q. Yes.

A. That was built.

Q. Completely built up?

A. Completely built up, yes, sir.

Q. Now, take Flagler Place; was that completely built up when you first moved in?

A. Yes, sir.

Q. All the way down to U Street?

A. I believe so.

Q. Where was the Green House?

A. Just a minute. That is—was right where that colored apartment stands now, on the corner of Second and—not Adams! What is the street below Adams?

Mr. Urciolo: W Street.

The Witness: Yes, I think it was W Street.

560 By Mr. Houston:

Q. Then, how much property had been built up south of Adams Street, west of the 100 block—any more houses been built up on W Street? The W Street property, was it just a farm?

A. Oh, from the store on Flagler Place and W, the green house was right back of that running parallel with the alley, and then the owner of the green house—I believe his home was on the corner of Second and W.

Q. Was the block different between W and V, on Second? Was the block built up on Second Street between V and W, where the little apartment now stands?

A. No, not that I remember.

Q. Well, now, take between—just a minute; V and W Street jog at Second Street do they not, in the sense that they do not go straight through, but you have to make a curve?

A. Coming up to Second Street, you have to come around and go up Elm Street to go west.

Q. Yes. Now, were the houses opposite the apartment built up on the west side of Second Street?

A. No, no.

Q. The west side of Second Street—had it been built up?

A. No, it had not; in fact there was nothing but a path from Bryant Street, the street having never been cut
561 through, to the—I believe the school house—there was nothing but a path there.

Q. Say from Bryant to Elm, then; is that correct?

A. Bryant to Elm, down that way; yes, sir.

Q. And as far as you could see—Strike that.

Going on down to Second Street, opposite the school, was that built up, on the west side opposite the school?

A. I believe it was, Mr. Houston.

Q. Would it help you if you had a map?

A. Well, I don't know.

Q. I mean—

The Court (Interposing): He seems to be getting along all right.

The Witness: I guess I can get along; if I don't, ask me again.

By Mr. Houston:

Q. You think Second Street was built up opposite the school?

A. I think it was.

Q. How about U Street between First and Second?

A. That was built up.

Q. V Street, between First and Second?

A. Partly built up.

Q. Where did the houses end—

A. Just a minute.

562 Q. Between first and Second?

A. First and Second—that is where—no; W is where the green house was. No, I don't think there were many houses built in that square. I think they were built after—later.

Q. Your best recollection is, then, that they were not built?

A. I don't think they were built on Second Street, south of V Street.

Q. And not built up on V Street, either?

A. Between Second and First Street there were some; but there was a house on the corner of Flagler, but west of Flagler on V Street, I don't think there were any houses to Second Street.

Q. Now, at the time that you first moved—wait a minute; let me ask you this: You said that Second Street was a path between Bryant Street and the school. Was there a street south of the school?

A. Flagler Street.

Q. To Second Street?

A. Yes.

Q. Was a path between Bryant Street,—was there a street to Second Street paved or anything, from south of the school?

563 A. From the school south, the street had been improved, but north of the school I think there was just a path. In fact, there was a lot of shrubbery, that is, scrub growth of oak and things of that sort.

Q. Now, when you first moved there in 1909, so far as as you could see, there were whites all the way down to Rhode Island Avenue; is that correct?

A. I would say there were; yes, sir.

Q. Would it also be true, all the way down to Florida Avenue?

A. I couldn't say.

Q. But to Rhode Island Avenue, you would say?

A. I would say down to Rhode Island Avenue they were all white.

Q. Rhode Island Avenue north?

A. North, yes.

Q. Now, can you trace the gradual spread of the negro population northward from Rhode Island Avenue; I mean to the best of your recollection, of course?

A. You mean as to date?

Q. As near as you can, roughly. I mean, in terms of years, thirty years—tell us when—

A. I would say that within perhaps the last fifteen years the encroachment had been made.

Q. Well, now—

A. (Interposing:) I don't think, previous to that, it had.

564. Q. Would you say, Mr. Hodge, that it was a gradual and steady encroachment, if you want to use that term, south, from the south to the north?

A. May I illustrate?

Q. Yes; yes.

A. Yes, I would say so, but perhaps it has been more within the last ten or twelve years.

Q. All-right. What I am getting at is this: Would you say that what happened was in substance that negroes would move into one street, the houses then, they would move north to the next street, and come up just like that?

A. Yes, sir.

Q. So that it hasn't been in a sense of them spotting here and there; it has been more of a mass sweep, would you say that that would be a correct statement?

A. Gradual.

Q. Gradual mass movement?

A. Yes.

Q. Would that be a fairly accurate statement?

A. I would say so.

Q. And that no negroes or persons that you considered negroes moved into Bryant Street east of 154 Bryant Street until practically all of the houses on Adams Street had gone, had been occupied by negroes, if you know?

A. I wouldn't say.

565-566 Q. Well, is it true that there was a general occupancy by negroes on Adams Street and all streets south of Adams Street between First and Second before negroes began moving on Bryant Street into the 20 houses which are under covenant?

A. State that question again.

Mr. Houston: Will you read it, and if it is not clear I will rephrase it.

(Record read by the reporter.)

The Witness: No, there were whites on Adams Street; I would say there were whites on Adams Street before they started moving into Bryant.

By Mr. Houston:

Q. My point is: Before they started moving into Bryant Street, had most of the Adams Street houses been occupied by whites and gone over to colored?

A. Gone to colored.

Q. So the negroes had practically completely occupied Adams Street before they began moving into Bryant Street in the covenanted area?

A. Yes, sir.

567 Q. Mr. Hodge, we just about cleaned up the general development of the area, and the migration of negroes. Let me get down to Bryant Street, itself.

What, if anything, did you do when the negroes began to move into the 100 block of Bryant Street at first, in the houses 154 down to Second Street?

A. Nothing, because there is no covenant for those houses.

Q. Did you attempt to get a committee of white owners together to put in a restrictive agreement?

A. I believe—there was a movement on foot to do that.

Q. You mean that was attempted?

A. I think that was attempted.

568 Q. And it did not succeed?

A. I couldn't say, Mr. Houston. I don't remember.

Q. Now, have you been disturbed by the presence of these negroes at 154 Bryant Street yet?

A. No, sir.

Q. Has it any way affected the sociability of the neighborhood, the 100 block of Bryant Street—that presence, from 154 west?

A. They stay by themselves and white folks stay by themselves.

Q. Then what is the answer? Has it affected the sociability of the neighborhood, the square,—their presence?

A. I would say it has.

Q. It has?

A. Yes, sir.

Q. So that even if the injunction were issued, you would not be able to create an entire white square in the 100 block of Bryant Street?

A. We couldn't—

Q. That is to say, the proportion would be at least 11 over 31 houses being negro, over one-third of the houses would be negro?

A. One third, yes, sir.

Q. Even if this injunction were issued?

A. Yes, sir.

569 Q. Now, have you had any trouble whatsoever with the negroes in the properties which are in these two suits?

And Mrs. Hurd, Miss Stewart, Mr. and Mrs. Savage, Mr. and Mrs. Rowe—have you had any trouble with them?

A. Nothing so far.

Q. The answer then is no?

A. No.

Mr. Urciolo: I object, Your Honor. There is no testimony that the Hurds are negroes. If you want to make that exception, I will withdraw the objection.

The Court: The objection is overruled. That was Mr. Houston's language.

Mr. Houston: I think if your Honor please, let it be understood for the purpose of the record that I am taking the allegation as to color as the plaintiffs have made it. I think my position is sufficiently clear not to urge that,

so—

The Court: The record may stand as made.

Mr. Houston: Well, as to that, we will clean it up.

By Mr. Houston:

Q. You have had no difficulty with persons who are defendants in these cases?

A. No, sir.

Q. Have they stayed to themselves and have you stayed to yourselves,—you and Mrs. Hodge stayed to yourselves, then?

570 Mr. Gilligan: Let him speak for himself.

The Witness: State the first part of that, Mr. Houston. I didn't get it.

Mr. Houston: Will you read it back?

(Record read by the reporter.)

The witness: I see. Yes, they have stayed to themselves. I thought you said "s-t-a-t-e-d," stated.

Q. Now, it isn't the color of the individual, apart from the question of race, which disturbed you in Bryant Street, is it? In other words, an Assyrian might be darker than a negro, but it doesn't disturb you on Bryant Street?

A. No; I will answer that question with a proviso, and that is, it is the covenant that is to be upheld.

Q. Now, leave out the question of the covenant. I am talking about your own personal attitude.

A. Yes.

Q. The question is: Does the color of the Assyrian disturb you on Bryant Street?

A. No.

Q. Even though he may be darker than a negro?

A. No.

Q. Does the color of an Assyrian affect you, affect the sociability of the block of Bryant Street, even though he be darker than a negro?

571 A. I wouldn't say so.

Q. Now, suppose that a person moves into Bryant Street who can't be distinguished—identified either as being white or as being a negro. Would that affect the sociability of the block?

A. It would be questionable.

Q. Please say what you mean.

A. Well, we know whether they are white or colored.

Q. Until you knew whether they were white or whether

they were colored, would that affect the sociability of the block?

A. I couldn't say that it would.

Q. And you can't say that it would not?

A. No, as to the color, it would have to be definitely known.

Q. In other words, until it was definitely known, it would not affect the sociability of the block?

A. No.

Q. Just living there and up to that point, up to the moment it was definitely ascertained that that person had negro blood, I understood your answer to be that it would not affect the sociability of the block?

A. Yes.

572-574 Q. It would not?

A. It would not.

Q. Now, I am saying suppose that persons still keeps entirely to himself or herself, pursues the same course of conduct, just coming in her house, going out of her house, about her business, saying nothing to anybody, but just living in her house,—suppose that person pursued the same course of conduct afterwards as before it were definitely known that that person had negro blood, how would the fact that it became known that the person had negro blood, if there was no other factor changed, affect the sociability of the block?

575 The Witness: Well, I say—I would say that it would affect.

By Mr. Houston:

Q. I asked you how?

A. Oh, how—pardon me.

Well, I don't know as I could say, Mr. Houston. Just how it would affect it—in a general way.

Q. How long did the Marchegiani house remain empty before a white tenant moved in?

Mr. Gilligan: I object to the question, if Your Honor please. That was a perfectly proper question to have asked Mr. Marchegiani or Mrs. Marchegiani, but I don't see it is pertinent as to this witness, if he knows.

The Court: He may answer.

The Witness: I don't know.

The Court: He said he doesn't know.

By Mr. Houston:

Q. The tenants who moved into the Marchegiani house are some relation either to you or to your wife, are they not?

A. No, sir.

Q. Are the tenants who moved into the Marchegiani house known to you or to your wife?

A. No.

576 Mr. Gilligan: Of course, he speaks for himself.

Mr. Houston: Yes. I mean, as far as he knows.

By Mr. Houston.

Q. Do you know the tenants who moved into the Marchegiani house?

A. I do not.

Q. Do you know whether Mrs. Hodge knows the tenants who moved into the Marchegiani house?

A. I don't think she does.

Q. Did you consider from the observation of the tenants who moved into the Marchegiani house whether they are white or colored?

A. I have not seen them. I think they are white.

Q. You think they are white?

The Court: Wait a minute. You have not seen them?

The Witness: Your Honor, if the person I have seen, going in and out—I have seen people going in and out, but I don't know whether live there or not.

The Court: All right.

By Mr. Houston:

Q. Then, you do not make it your business to make inquiry as to each new person moving into the block, as to who he is and what he is? I mean, you do not take the initiative to make that inquiry?

A. No, I do not. I have not.

577 Q. So far as you are concerned, the person moving in or moving out does not affect the sociability of the block, just as a fact of moving in or out?

A. No, I would not say it would.

Q. So that people could change repeatedly and it would not affect the sociability of the block, leaving the question of race apart?

A. I wouldn't say that it did,—no, sir.

Q. When you state in your complaint, paragraph 10, that the negroes owning, holding deeds and conveyances and occupying the property would be injurious, depreciative and absolutely ruinous of the real estate owned by the plaintiffs—what did you mean?

A. Well, if the property was sold to negroes, I think the property would depreciate in value, as far as having them further occupied by white persons is concerned.

Q. So far as you know, what white person has moved out of the block since negroes moved in, except the Marchegianis, where such white did not move out under pressure of either a notice to quit, or a Landlord & Tenant Court order?

578 A. I don't know.

Q. So far as you know, no such—no white person has moved except the Marchegianis and those persons who moved under notice to quit served on them by the new owners.

A. As far as I know, I can't call them to mind.

Q. Do you maintain that the purchase of their homes by the negroes has lowered the market value of your property?

A. I do

Q. On what do you base that? I am talking now of market value, sale value.

A. There being a covenant in my deed which would prohibit me from disposing of my property to negroes.

579 Q. On what do you base your answer when you say that it would lower the purchase of homes—that is, the purchase by negroes would lower the market value or sales value of your property?

A. Didn't I just answer that?

Q. Not to my satisfaction.

Mr. Gilligan: Will the Court have the answer read, what he did state, so that Mr. Houston may have that before him in asking his new question?

The Court: What was your answer? I just don't quite recall?

The Witness: I stated, if I am not mistaken, that the sale of my property, it having a white covenant in the deed, that the sale, I wouldn't be able to dispose of my property to advantage unless I sold to a negro.

By Mr. Houston:

Q. Well, does it follow that you could not get just as much if you sold to a negro as if you sold to a white?

A. I don't think a white person would want to buy the property.

Q. So then you could sell—I think you had finished your answer.

580 A. Yes.

Q. But you could go to a negro and get the same money which would not be marked as to whether it came from white or colored, could you not?

A. That remains to be seen.

Q. Do you have any facts, or any other experience on which you could base your statement that a purchase by negroes would lower the market value of your property?

A. Only in a general way.

Q. By "general way" what do you mean? "General way"?

A. Property that has been disposed of—where there has been covenant, or where there hasn't been covenant.

Q. Has that property been disposed of for less than it would have been if negroes had not bought in there?

A. I would say that a white person would not pay the money that property would be worth if they knew that negroes were liable to come in as their next door neighbors.

Q. Well, would a negro pay you what the property was worth under the circumstances?

A. Possibly they would.

Q. So the market value would not be lowered, would it, in the sense of what the property would bring in the market?

A. I would not say that it would.

Q. So therefore the purchase of the property by negroes would not lower the market value of the property in the sense of what it can bring in the market? I am not talking about whether the purchaser be white or colored, but what the property would be worth in the market?

The Court: Isn't that the same question that you have just been exploring?

By Mr. Houston:

Q. Mr. Hodge, you are from Massachusetts, I am informed.

A. Yes, sir.

Q. In Lowell, Massachusetts, do negroes and whites live in the same block without any difficulty?

Mr. Gilligan: I object to the question, if your Honor please. I do not see that it has any bearing here.

The Court: Sustained.

Mr. Houston: I should like to find out—I mean I should like to develop his attitude, just as I found out so far as the Italians were concerned, your Honor, and that is the purport of the examination.

The Court: Objection sustained.

Mr. Houston: No further questions.

582 Cross-examination.

By Mr. Urciolo:

Q. Mr. Hodge, how much would you take for your property today, if it were for sale?

A. Mrs. Hodge stated \$12,000, but I would not take less than \$15,000; the improvements that I have put on it.

Q. Which improvements have you put on it?

A. 40-pound tin roof; built double back porch; 12 by 14 feet, three stories high; all new brass water pipe, and new furnace.

Q. Altogether, how much did the improvements cost you?

A. Well, I would say at least four or five thousand dollars.

Q. That amount was spent how long ago?

A. Most of it was in the last six or seven years.

Q. Now, how much did you pay for the property?

A. \$4,350.

Q. So altogether the property stands you around \$9,000?

A. I would say so.

Q. But if I offered you \$9,000 today for the property would you take it?

A. I would not.

Q. Then how do you justify your statement that it is ruined; that the presence of negroes has ruined it?
 583 A. Because I don't want to sell it; it is my home.

Q. Now, Mr. Hodge, when Mr. Savage came to your house to get the key for the house next door, did you ask him if he was a negro?

A. No, sir.

Q. Did Mrs. Hodge ask him if he was a negro?

A. I don't know.

Q. You were not there when he came?

A. I came to the door and he asked to get the key for the next door. Mrs. Hodge left the room and went to the front door and handed him the key. I don't know what the conversation was.

Q. No conversation took place?

A. I don't know what the conversation was, because I was in another room.

Q. Now, Mr. Hodge, will you please tell me this: During the last five years, in the 100 block of Bryant Street,—have there been any vacancies?

A. You mean—

Q. (Interposing:) If you know.

A. You mean where tenants have moved out?

Q. Yes. And have they remained vacant for sometime?

A. I don't think there has. I don't recall any. I don't call to mind any right now.

Q. You stated—

584 Mr. Gilligan. What was that?

By Mr. Urciolo:

Q. Mr. Hodge, you stated on direct examination that you had not seen Mrs. Hurd before filing this complaint. Is that correct?

A. I stated that?

Q. Yes.

A. I don't remember seeing Mrs. Hurd until I saw her here in the courtroom, within this week. Mrs. Hurd has been in the courtroom this week.

Q. My question was—when you signed this complaint had you ever seen Mrs. Hurd before?

A. No, no.

Q. Then how did you know she was colored? Your complaint states that she is of the Negro race.

A. Yes.

Q. How did you know she was colored?

A. I presumed she was from the fact that her husband is a negro.

Q. How do you know her husband is a negro?

A. I judge from the color.

Q. But as a matter of fact, you do not know,—or did not know,—what Mrs. Hurd was; is that correct?

A. No.

Q. Now, Mr. Hodge, how did you determine that
585 Mr. Hurd was a negro?

A. I have no way of telling, except by looks and color.

Q. Is his color any different than, say, and East Indian?

A. I wouldn't know.

Q. So you took a guess.

A. I looked—he looked to me like a negro, therefore I presume he was a negro.

Q. Now, Mr. Hodge, would you say his color was any different from an American's Indians. Plenty of American Indians are in Massachusetts, that you must have seen.

A. Yes, and he would be much darker than an American Indian was; his complexion would be much darker than an American Indian's was.

Q. All American Indians?

A. On an average. An Indian is supposed to be a red man.

Q. Now, let me see if I understand you correctly: Your statement is that you had never seen Mrs. Hurd when you signed this complaint that you put out under the grounds that she was a negress, because you took it for granted that because you thought Mr. Hurd was a negro, therefore Mrs. Hurd was a negro?

A. I did.

586 Q. When Mr. Giancola bought his house, did you have any suspicions about him, as whether he may have had a spot of negro blood?

A. I did not.

Q. One further question: Isn't it a fact today, Mr. Hodge, that with the exception of two or three white persons scattered in the vicinity, everybody west of First Street, except

these twenty houses on Bryant Street, that everything is solidly colored?

A. I couldn't say.

Q. Could you say that it was predominantly colored?

A. I couldn't say.

587 Q. Would you say that it was predominantly white?

A. I would judge so.

Q. Everything was from First Street?

A. Well, how far south?

Q. From Rhode Island Avenue to Bryant Street?

A. No, I wouldn't say that.

Q. Then what would you say?

The Court: Well, you had better ask the question.

By Mr. Urciolo:

Q. My question was: To date, with the exception of a half a dozen white persons, everything west of First Street from Rhode Island Avenue to Bryant Street, is colored, except these twenty houses on Bryant Street?

A. I wouldn't say that they are all colored.

Q. What would you say?

A. I would say that they are mixed up; colored and white; but I wouldn't say which predominates.

Q. You mean fifty-fifty percent?

A. I would not say that because I don't know.

Mr. Gilligan: I have no questions.

Mr. Houston: I would like to ask a few.

Redirect examination.

By Mr. Houston:

588 Q. What is a negro about Mr. Hurd's features?

A. I couldn't say unless I saw her—oh, Mr. Hurd. I thought you said Mrs. Hurd. Pardon me.

Mr. Houston: Go up there (addressing Mr. Hurd) and sit down, Mr. Hurd.

(Mr. Hurd takes seat in jury box near witness).

The Witness: I would say the nose, for one thing.

By Mr. Houston:

Q. You mean that high nose is negroid in a person?

The Court: He has not said that was a high nose.

Mr. Houston: I asked him, he didn't say that it was a high nose, I did.

The Court: But your question implied it.

By Mr. Houston:

Q. Would you say it was the height of the nose that is negroid?

A: No, sir; I would say the nostrils, the lower part of the nose.

Q. And his hair; what is there negroid about his hair?

A. His hair is more or less straight.

Q. Is that a negroid characteristic?

A. Not always.

Q. Well, what I am trying to get at is—does his hair have any negro characteristics?

A. What?

589 Q. Does his hair have negroid characteristics?

A. No, I wouldn't say that at all.

Q. And it is your testimony that—his nose and his skin—

A. I would say that it had.

Mr. Houston: All right. No further questions.

Mr. Gilligan: No further questions.

Thereupon ROBERT H. ROWE was called as a witness for and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

590 Direct examination.

By Mr. Houston:

Q. State your full name, Mr. Rowe.

A. Robert H.—Robert Harris Rowe.

Q. And your present address.

A. 118 Bryant Street, Northwest.

Q. And how old are you?

A. 46. I will be 46 the 25th day of October.

Q. And are you a native American citizen?

A. I hope so.

Q. Born in this country?

A. Yes, sir.

591 By Mr. Houston:

Q. Did you know your grandparents?

A. No, I didn't.

Q. Just knew your mother and father?

A. Mother and father, they died years ago, long before I knew anything about that.

Q. They were natives of what states, your mother and father?

A. North Carolina.

Q. What state of the Union—and you are from North Carolina?

A. North Carolina.

Q. How long have you been in the District of Columbia?

A. About twenty-one years.

Q. What is your work?

592 A. Well, I does work for the Washington Water-proofing Company, 601 South Capitol Street. We do general repairing and general building.

Q. And what is your particular classification; helper, carpenter, or what?

A. Well, just—well, I can't tell, hardly. Helper, more than likely.

Q. Yes. Now, your wife, Mrs. Rowe, is she a native American citizen?

A. She is.

Q. And where is she from?

A. Rocky Mount, North Carolina.

Q. How long has she been in the District of Columbia?

A. We came here the same thing, same length of time, only I came about three days before she came.

Q. What does Mrs. Rowe do? Does she work?

A. She does.

Q. What is her profession, if any?

A. She is a registered nurse, and works at Freedmens Hospital.

Q. Now, Mr. Rowe, when did you purchase your property on Bryant Street?

A. I think it was about the 1st of March.

Q. What year?

A. Of this year.

593 Q. And how did you happen to purchase on Bryant Street?

A. Well, I was living at 50 Florida Avenue, and that place was sold and I was forced to vacate, served notice the place was sold and to vacate within 30 days, and so I went on and just quit work and just went on out, and kept going, until I could find somewhere to move to, couldn't find nowhere for rent, neither to buy, so far, for better than a week. I didn't give it up, though. I kept going. I told my wife, "Well, I won't work any more until I do find something," so I went to some four or five real estate places. First I went to Torres Real Estate, North Capitol and Quincy Place, and he says, "Well, I don't have a thing," and I went to another real estate place down on New York Avenue, between 10th and 11th, I forget the name of the real estate company, only it's on the left-hand side of New York Avenue between 10th and 11th, but they had one place, but that was in an apartment, a small place up on Lincoln Road, and I wasn't successful there, so I went to—well, I was so discouraged, and I went back home and told my wife, "Well," I said, "I hadn't found a thing," and I took the evening paper and found in that, I saw where Slaughter & Company had places at 17th Street, so I saw they had some places out near, and I told my wife where Slaughter & Company had places advertised for sale and I said, "I guess I will go down there," so I did, and asked them, and they said, "Yes, We have places for sale," and I said, "Referring to places you have advertised out Northeast," I said, "How about them?" He said go out and take a look and I went out there. They were small places. Little two-room kitchenettes, well, no, I just—Well, I considered, I still didn't have nothing, and I went back and he said, "How did you like that?"

I said, "I didn't like that."

He said, "I have a place up on 14th and W" he says, "suppose you take him up and see that," and I went up there and Mr. Harrington, he is a real estate man, taken me up there and I looked at that and that was a small place.

Q. Incidentally, is Harrington white or colored?

A. He is white.

Q. Is Slaughter, the real estate firm, is that white or colored?

A. White, and so I wasn't successful there, so I went up on 11th Street; he showed me a small place up on 11th, I

couldn't consider that because I could see the stars and moon shine through the roof of the kitchen, and so I told him, I said, "I don't want to live in nothing when it rains," so he said, "Well, I tell you," he looked on his file, he said, "I have a list of them down here on Bryant Street. Suppose we go down there."

And so we went down on Bryant Street and he showed me, we stopped at First, at 153 I think it was, or was it 52?—and he met the lady at the door and he told her, says, "I want to show this house," and she objected. She told him she wasn't—he wasn't coming in there. He says, "Well, I have a list here" and "the house is to be shown. It is for sale." And, she says, "Well, you won't come in here."

Well, I says, "Okay." Well, I go on up the street, if your Honor please, and we went on up on Bryant Street, if your Honor please, and he said, "Now, there is a colored family lives here at 116," he said. "Now, I don't think the family is at home, the Hardings, at 118."

He knocked and knocked on the door and said, "We will go to 116," so a lady came to the door, and he says, "Do you mind this gentleman, I want to show him this house," he says, "It is similar to the one next door. I think he would like the one next door," he says.

"It is for sale, too." She said to come in and she opened the door and we went through the house, and up the stairs, and downstairs and started down into the basement, and the dog run us back.

I said, "Never mind." We went outside and he said "118 is the very identical thing with this house, the same thing." "Do you think you would like that? It has got the amount of room you say you think you want."

I said, "Yes, I think I would like that very good."

He said, "Okay" he says, "Where is your wife?"

I says, "She hasn't come from work."

He said what time would she be off. And I told him and he looked at his watch and said, "It is time for her now."

So I said, "We'll go pick her up," so we went down and picked up my wife and she says she thinks very much she would like it. He said, "Now, in case somebody else would want to cut in and tie the deal, we'll go on down to your house and you just make me a partial payment to tie the deal so nobody else he can get it until you finally decide or not."

We went to our house and went in and I said, "How much money do you require?" and he said, "\$100, \$200, or \$250, just to tie the deal, to keep somebody else from getting it."

I paid him \$250. He said, "Okay, I will draw up a contract for you now."

He sat at the table and drew up the contract and said "when you come—when can you come up to the real estate place?" And I said the next evening, so the next evening I went to the real estate place and he told me just what the house was clear and listed for sale and the others, he gave me four more and said I could look at them if I wanted to and if I decide not to buy that one, any other one, and my money would be refunded, so we still preferred 118.

Q. Now, before you bought 118, did you pay any attention to whether any other negroes were in that same block?

A. I did.

Q. All right. What did you find out?

A. I found out on the lower end of Bryant Street was about four or five, I think there is a colored family, next door, where this lady refused to let us go in.

Q. Had you had any trouble in your neighborhood since you have been there?

A. No, I have not.

Q. Why have you done—have you done any fixing up of your own house?

A. I have.

Q. What have you done since you have been there?

A. I hauled four tons of dirt and I raised the lawn so far (indicating with hands). It has got to have practically another load to make it up to grade, and those brick columns, you could take a penknife and get a brick out of the piers in either side.

The step up to the door, bricks, were loose, the mortar gone out of them, and I am pointing them up now, and you could push, let's see, there are six stone things there, three on either side, and in fact, Mr. Harding said one fell and he put it back, but it was put in backwards and I did that, so far, and out in back it was just growed up out in the back yard, so much so, well, I guess when the trash man came along that he got a load out of my house. I cut

the back yard out; it has growed up so there was even dry land turtles out there.

Q. Is your property now in better shape than when you went in?

A. Better?

Q. Is your property in better shape now than when you went in it?

A. I should say yes, because I occasionally work on it in the evenings when I come home.

Q. Did you intend to occupy that property as a home, or buy it as an investment?

A. Oh, a home.

Q. Do you have any relatives in the service?

599 A. My wife's brother, Roy. He was in the service.

Q. Did you notice any other negroes in any other — I am not sure that I carry in my mind your answer. Did you notice any negroes or persons who were supposed, or were pointed out to you to be negroes, or thought to be negroes—did you see any in the block?

A. At 116, next door.

Q. And where else?

A. And lower, at the lower end of the street, on down from about 152 on down to the corner.

Q. And then were there negro or persons looking like negroes behind you?

A. On Adams Street?

Q. Yes.

A. Oh, yes.

Q. And—

A. I have a friend living on there, a neighbor of mine, Mr. Harold Eden.

The Court: Just answer the question.

By Mr. Houston:

Q. And had you visited Mr. Eden prior to the time you moved to Bryant Street?

A. I have recently.

Q. Did you anticipate any trouble on Bryant Street?

600 A. No, I have not.

Q. Did you anticipate any trouble before you moved, coming up, on account of the fact that you moved into Bryant Street?

A. To Mr. Eden?

Q. No. Did you anticipate any trouble coming to yourself because you moved to Bryant Street?

A. Oh, no. No, I didn't.

Q. Well, I mean Mr. Gilligan says, if I can paraphrase it—did you expect you were going to have any trouble when you moved on Bryant Street?

A. No, indeed.

Mr. Houston: All right. Your witness.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Rowe, did you ever see me before buying your house?

A. No, I did not.

Q. Did you ever see me at the title company?

A. No, I did not.

Q. Did you ever see me at all before coming to court?

A. Yes.

Q. That last was Yes?

A. Yes. One time.

601 Q. When was that?

A. The 18th of July when you left Small Claims Court over there, I came by the court for the title.

Q. Now, Mr. Rowe, did Mr. Eden tell you that an injunction was issued against him to move out of Adams Street?

Mr. Gilligan: Object, if your Honor please.

The Witness: No, I did not.

The Court: He said no, so let it stand.

Was that all, Mr. Urciolo?

Mr. Urciolo: I think that is about all.

Cross-examination.

By Mr. Gilligan:

Q. Mr. Rowe, you are a negro, are you not?

A. What?

Q. You are a negro?

A. I hope so, sir.

Q. And so is your wife?

A. Yes, sir.

Q. And when you were served the papers by the United States Marshal, the complaint, where were you living?

A. To vacate?

Q. Yes.

A. The 15th?

602 Q. No, no. Where were you living when these papers were served on you about this suit?

A. Oh; at 118 Bryant Street.

Q. Are you sure of that? When did you move into 118 Bryant Street?

A. I moved in there the 12th of August.

Q. 12th of August?

A. Yes, sir.

Q. And if I should tell you that these papers, according to them, (indicating), show that you were served with a copy of this complaint on July 30th, then you would surely know that you were not living on Bryant Street, in the Bryant Street house when you were served with the complaint. Were you not living at 50 Florida Avenue, as a matter of fact?

A. Where was I living?

Q. Yes; when these papers were served on you, papers like this (indicating)?

Mr. Houston: When you first got the papers to come to court.

By Mr. Gilligan:

Q. Like that (indicating, paper to witness).

A. I was living at 118 Bryant Street.

Q. You weren't living at 118 Bryant Street on July 30, were you?

A. No, I moved there the 12th of August.

603 Q. So that you are mistaken on where they served them on you, if they were served on July 30th? Where were you living on July 30th?

A. No. 50 Florida Avenue.

604 Mr. Gilligan: That is sufficient I think, if your Honor please. I don't imagine, though, to tell the truth, he thinks differently, but he is just simply mistaken about it. Unquestionably he was not living at 118 Bryant Street.

By Mr. Gilligan:

Q. You say that this man you went to see was at Slaughter & Company?

A. Which one?

Q. The one that took you down on Bryant Street to show you that?

A. Oh, yes; he is a real estate agent.

605 Q. What was his name?

A. Mr. Heeny.

Q. Heeny?

A. He has a deformed hand.

Q. When he took you down to 118 and asked to let you look at the house, and they refused, what reason did they give for not letting you in—118?

Q. A. We didn't go there. We went to 152, or somewhere there.

Q. What reason did they give?

A. Didn't give any reason, they wasn't going to show it until she moved out.

Q. Don't you remember testifying a moment ago that they wouldn't let you in?

A. No; I said wasn't anybody at home.

Q. That is, and you went next floor and looked at that?

A. With Mr. Heeny.

Q. Did Mr. Heeny say anything at all to you about negroes not being able to occupy those houses?

A. Mr. Heeny?

Q. The man you said took you down.

A. Oh, yes—no, he didn't.

Q. And you didn't know anything at all about the fact that negroes are not supposed to buy those houses
606 or occupy them until—when?

A. Until I got a notice to appear in court here.

Q. With Mr. Urciolo?

A. Mr. Houston.

Q. And did he go down to court with you?

The Court: I thought he said until he got notice to appear in this court.

Mr. Gilligan: I thought it was in the Municipal Court.

The Witness: This court.

The Court: In this trial; in this court?

The Witness: In this trial.

By Mr. Gilligan:

Q. Didn't you also say you went to Municipal Court?

A. I went to the other court when they was having me in court to try to make me vacate No. 50 Florida Avenue, but he wasn't involved in the case.

Q. He wasn't?

A. No.

Q. Did you have to get an order to get into No. 118?

A. From Mr. Heeny?

Q. Slaughter & Company?

A. Yes, sir.

Q. Is he a lawyer, too?

A. No, sir.

Q. Mr. Urciolo didn't go with you?

607 A. No, I never seen him until I went to the office to get the title.

Mr. Gilligan: I don't believe I have any other questions.

Mr. Gilligan: If Your Honor please, there is a gentleman here from the Traffic Bureau, and I would like to put him on just for a minute.

Thereupon THOMAS E. WEST was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. State your full name, please.

A. Thomas E. West.

Q. What is your position, Mr. West?

A. I am examiner for drivers' permits for the Department of Vehicles and Traffic.

Q. And do you have access to the various applications for permits?

A. Yes, sir.

608 Q. For driving licenses?

A. Yes, sir.

Q. You were subpoenaed to come here?

A. Yes, sir.

Q. Did you bring with you the application of James M. Hurd, for a driver's permit in the District of Columbia?

A. Yes, sir.

Q. May I see it?

A. Yes, sir (handing document to counsel).

Q. Is this it (holding up document)?

A. Yes, sir, that is a renewal.

Q. A renewal?

A. Yes, sir.

Mr. Gilligan: I would like to have this in the record as Plaintiffs Exhibit. Would you leave it with us?

The Witness: No, sir.

Mr. Gilligan: Could I have it in the record, or let it be marked and then let him have it whenever he wants it?

The Court: Yes.

(The Hurd application for license referred to was marked Plaintiffs' Exhibit No. 13 and received in evidence.)

By Mr. Gilligan:

Q. Mr. West, this card has a certain language on it. Who filled that card out?

609 Mr. Urciolo: If he knows

By Mr. Gilligan:

Q. If you know.

A. Well, on a renewal card, it requires the signature of the person obtaining the permit for renewal. On the renewal, there is no sworn affidavit on it.

Q. No sworn affidavit, but you would say that this "James M. Hurd" must have been written by him?

A. Yes, sir.

Q. Otherwise he could not have gotten his permit?

A. Yes, sir.

The Court: I think you had better put the substance of it in the record.

Mr. Gilligan: I would like to, if Your Honor please.

The number is 218454, Expiration Date: August 25, 1943, and then a later expiration date, August 25, 1946.

Date of Birth—8/18/91. Age: 52. Occupation: Welder. Race; Negro, definitely marked by an "x", underscored.

Sex: Male, underscored. Weight: 152. Height: 5 feet 11-1/2. Color of hair: Black. Color of eyes: Black.

I think the rest of the information there is not essential in this case, except to show that he lives at 116 Bryant Street, Northwest. The date seems to be June 1st, 1944, and it is signed "Signature of Applicant: James M. Hurd, residence 507 New Jersey Avenue, Northwest." The 116 Bryant Street, Northwest, is here in lead pencil as 610 June 1st, '44.

By Mr. Gilligan:

Q. I presume that means that he changed his residence after the application had been filed?

A. Yes, sir.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Houston:

Q. Mr. West, how many different indications of race and nationality, or anything, appear on that blank in the printed form?

A. Well, it only shows the one race here.

Q. You mean the printed form itself makes provision for how many?

A. I mean the application for renewal.

Q. The application form.

A. It says—you mean the race and sex—is that what you mean?

Q. Race,—how many races?

A. It has "White" and "Negro."

Q. White and negro?

A. Yes, sir.

Q. There is no provision in there for Indians, is there?

A. No, sir.

Q. Or Chinese?

611 A. No, sir.

Q. Or Japanese or East Indian or anything like that—either white or negro?

A. That is right.

Q. And your rules are that they must check one of those blanks; isn't that true?

A. Yes, sir.

Mr. Houston: That is all.

Cross-examination.

By Mr. Urciolo:

Q. What did you tell them to check, Mr. West, if they are Chinamen?

A. We have them put down "Yellow Race"; write it in ink.

Q. Right where it says "Race," scratch both these out and put "Yellow" down. What do you do if he is an East Indian or an American Indian?

A. They put down "Indian."

Q. Now, how would an applicant know, Mr. West, unless he came to you for some assistance, for instruction?

A. Well, as a rule, where an applicant comes in, and they fill out these applications they see there are only two markings on there and they say "I am an Indian" or "I am Chinese," whatever it might be, and "What shall I do?"

We tell them to put in this column, right before 612 that, put their color in and check out those two.

Q. I don't understand.

A. We cross out those two, and they put their race right above that, on the top part.

Q. Do you pay very strict attention to that, the office in general pay very strict attention—do you have any classification for example as to whether they are Chinese or Japanese?

A. No, sir.

Q. None at all?

A. No, sir.

Q. In other words, the form is immaterial?

A. Well, it is the only form we have ever had.

Q. It is a question of identification?

A. Identification—that is right.

Q. Has that question ever come up in your office, to your knowledge, Mr. West, as to whether these forms should not be revised so as to state, or provide space for several of the five recognized races?

A. It hasn't come up in our office, from the Director of Traffic's Office; but it has come from the public several times and I have made a report on it.

Q. Give us roughly the gist of that report.

A. I only gave it verbally to my chief. It was a case where there—do you want me to cite the case?

613 Q. Please.

Mr. Urciolo: If Your Honor has no objection.

Mr. Gilligan: I have no objection, if Your Honor please. It is one of the things we would like to clear up, if you are satisfied.

The Witness: This is a case where there was a Filipino boy came in, I don't know—it has been five or six years ago—and he took it to fill out his application and checked—he didn't know what to check on it, so then he asked me; so I felt I must say that he was of a brown race, and I said, "You will have to write it in there," so he said, "It looks like you would have a space for me to check my race in," so I said, "I will make a note and ask them." So I spoke to the Section Chief and he said that he would report it, and that they would have a card made for different races, but they never did it.

By Mr. Houston:

Q. But they never did do so?

A. No.

Q. You have had experience that there are colored people who are not negroes but still don't want to check themselves as whites, have you not?

A. I don't know.

Q. You just mentioned this Filipino.

A. Yes.

614 Q. They would have no instructions—there are no instructions on the card, and if you are neither white nor negro, there are no instructions that you write in whatever race you are, are there?

A. No.

Q. Is there any such instruction?

A. No, it is left up to us to tell them.

Q. If a person doesn't come in personally to the office, in other word, sends in a card by mail, they get no instructions?

A. That is right.

Q. And there are no instructions on the card?

A. That is right.

Mr. Gilligan: Are these cards sometimes sent in, in the mail?

The Witness: Yes; this is a renewal.

By Mr. Houston:

Q. That was mailed?

A. Yes.

Mr. Gilligan: Do you have the original, he signed?

The Witness: No, sir, we don't have the original; we only keep them for three wears.

Mr. Gilligan: That is all.

Mr. Houston: It will be noted of record that this exhibit showed—

Mr. Gilligan: Does it show that it was mailed in?

615 The Witness: Yes, sir, it has got a stamp a postage stamp.

The Court: He has testified that it was.

Mr. Houston: Bearing upon it cancellation date of August 17, 1943.

Mr. Gilligan: "Renewal—1946."

Mr. Houston: The permit is good for three years; that is an expiration date, '46.

Mr. Gilligan: But the old expiration date was '43 and the new one is '46; that is the other way. It expires in '46.

Thereupon, JAMES J. GORMAN, was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Will you state your full name?

616 A. James J. Gorman.

Q. Where do you work, Mr. Gorman?

A. Home Title Insurance Company, in the District of Columbia.

Q. How long have you worked there?

A. A period of about five years.

Q. In what capacity?

A. As general title man.

Mr. Urciolo: Your Honor, I think it would be easier if I handed him this map; if we put it on top of the desk, if we may, Your Honor. I think we can do better.

(Counsel approached the bench, where the following took place:)

By Mr. Urciolo:

Q. Mr. Gorman, are you acquainted with the neighborhood of First Street west from Rhode Island Avenue to Bryant Street?

A. I am.

Q. Now, will you please tell the Court, Mr. Gorman—

Mr. Gilligan: Is it Grogan or Gorman?

The Witness: Gorman.

By Mr. Urciolo:

Q. Please tell the Court the denomination of the section of First Street, from Rhode Island Avenue north, or North Capitol, from Rhode Island Avenue north to Chan-
617 ning, and from North Capitol to First Street, including First Street—what that section generally denominated as?

A. On the land records that is generally denominated as "Dobbins Addition to the City of Washington"—the various blocks and squares thereof.

Q. It includes First Street?

A. It includes First Street.

Q. And all east thereof?

A. That is right.

Q. What is the territory directly west thereof denominated as?

A. That is denominated, on the land records, as "Addition to Le Droit Park."

Q. Now, Mr. Gorman, will you please state on which properties west of First Street—you have found restrictive covenants?

Mr. Gilligan: If you know, Mr. Urciolo.

Mr. Urciolo: If you know.

The Witness: I will have to say in that respect, Mr.

Urciolo, that in the examination I made of the property up there for you, for the purposes here today, I did not examine for covenants, so that—

By Mr. Urciolo:

Q. (Interposing:) Tell us only what you have examined.

A. I have examined that property up there many
618 times and I know that it is all generally covenanted,
but I can't state to you, today, which lots.

Q. Now, by streets?

A. Or where.

Q. I would like to know by streets; does Adams Street have covenants on it?

A. It does.

Q. Does W Street have covenants on it?

A. I would like to say—I can say generally that I believe it does.

The Court: Let's not go that way.

The Witness: I had rather not.

The Court: If you are not sure, say you don't know.

By Mr. Urciolo:

Q. If you know, answer; if not, say you do not. Does Bryant Street have covenants on it?

A. It does.

(At this point, counsel left the bench and the following took place with counsel back at counsel table and witness in witness chair:)

By Mr. Urciolo:

Q. Now, do you know—state only if you know—from houses 114 to 152 Bryant Street: Do they have covenants?

Mr. Gilligan: If Your Honor please, once before in making an effort to have a witness testify to this,
619 who had known very definitely about it, we were not allowed to have him testify.

Mr. Urciolo: I don't think Mr. Murphy was a title man.

Mr. Gilligan: He was not, but he was thoroughly familiar with the whole neighborhood and the subject, and so stated, and finally we agreed that if there was to be this type of testimony it was to be from the documents, and therefore I must object to this.

The Court: Sustained. The records are the best evidence.

By Mr. Urciolo:

Q. Well, Mr. Gorman, will you please tell the Court, if you have the records, what transactions have occurred in the changes of title in the 100 block of Bryant Street, in the last five years?

A. May I refer to my notes (examining papers)?

I examined that property for activity in the past five years, and can say that beginning on the west end of the Street, which is 116 Bryant Street—and that is Lot 114 in Square 13125—

Mr. Gilligan: I think you mean the east end.

The Witness: That is right; it is the east end. I am sorry.

(Continuing): —that Francis X. Ryan and his wife Mary Ryan are the present owners of that property and they acquired it by deed dated May 3rd, and recorded 620 May 9, 1944, from a Frederick Richmond and his wife, Pearl; they acquired the property May 2nd, 1944, by deed recorded May 4, 1944, from Raymond V. Marceron and his wife, Catherine A., and they acquired the property from the Rooney family, Julia M. Rooney, specifically, by deed dated June 15 and recorded June 16, 1942. That is all of the activity in the last 5 years as far as the title there is concerned.

118 Bryant Street, Lot 113, same square, under the present ownership of Robert H. Rowe, and wife, Isabella J., they having acquired the property by deed dated March 10, and recorded March 21, 1945, from Raphael G. Urciolo and wife, Florence. They acquired the property from a Ruth Price, by deed dated January 17, 1944 and recorded January 27 of this year. Ruth Price—pardon me, that is Rice, Ruth Rice acquired the property from Nelson B. Holmes, by deed dated November 16, recorded the 20th, 1942, and Nelson B. Holmes acquired it from the Drury Realty Corporation by deed dated January 23, and recorded February 4, 1941. Drury Realty Corporation acquired it from Arms & Drury, Inc., by deed dated December 30, 1939, and recorded January 11, 1940. That is all of the transfer activity upon that property in the last five years.

120 Bryant Street, Lot 112 is in the present ownership of Benjamin J. Wrightsman, who acquired it by deed dated March 4, and recorded March 6, 1945, from Philip G.

Wrightsman, sole heir of his mother who died intestate, February 22, 1945. That is all of the transfer activities there, within the past five years.

122 Bryant Street, which is Lot 111, present ownership: Francis M. Lanigan. He acquired that property back in 1905. There hasn't been any activity in the past five years on that.

124 Bryant Street—

By Mr. Urciolo:

Q. Excuse me, Mr. Gorman?

A. Yes.

Q. Did you check whether there had been any wills or administration proceedings on that property?

A. Yes, I did.

Q. 122, I am speaking of; 122 Bryant.

A. No, I didn't check the wills and administration. Francis M. Lanigan is now decedent, if he is—

Q. (Interposing: That is all.

A. That would show up in other records, of course. I was just looking for other activity within the square.

124 Bryant Street, which is Lot 110, is in the present ownership of Constatino and Mary Marchegiani, and they have been in ownership of that property for sometime. I ran it way past the five-year period, but I didn't get the deed through which they acquired it, but there hasn't been any activity within the last five years.

126 Bryant Street, which is Lot 109, in the present ownership of Florence E. Urciolo, who acquired it by deed dated July 14 and recorded July 27, 1944, from Catherine D. Leonard. There wasn't any further activity for the past five years on that.

128 Bryant Street, Lot 108, in the present ownership of Pasquale De Rita and his wife, Victoria. They acquired it by deed dated December 13, 1940 and recorded January 2nd, 1941, from Morris P. Kelly and his wife, Natalie. No other activity there.

130 Bryant Street, which is Lot 107, and taxed as Lot 808, presently owned by Balduino Giancola and his wife, Margaret, who obtained it by deed dated August 27, recorded September 2nd, 1936, from Alice Weber.

132 Bryant Street, Lot 145, presently owned by Helen Augusta Skinner and Melville Gibbs Skinner, who acquired the property as heirs of their father, Aaron Skinner, he obtaining the property back in 1909. No activity on that in the last five years.

134 Bryant Street, Lot 144 in the present ownership of Hubert B. Savage, and his wife Georgia N. They acquired that lot by deed from Florence E. Urciolo dated March 15, recorded March 30, 1945. Florence E. Urciolo acquired it by deed dated December 16 and recorded December 18, 1942, from Henrietta W. Weitz. She acquired the property by deed dated December 9, recorded the 18th, 1942, from 623 Albert J. McKurby and his wife, Eva M.

136 Bryant Street, which is Lot 143 is in the present ownership of Frederic E. Hodge and wife, Lena A. M., and they also have owned that property for some time, way beyond the five-year period you asked for.

138 Bryant Street, which is Lot 142, presently owned by Dominica Garzoni, who acquired it by deed dated February 2nd and recorded February 4, 1943, from Albert B. and Mary B. Easter.

140 Bryant Street, Lot 141, is owned by Helen E. Pyles, who acquired it in 1926 by deed from Aileen A. Callahan.

142 Bryant Street, which is Lot 140, under the present ownership of James M. O'Brien and his wife Catherine B., and they took title by deed dated September 18 and recorded October 20, 1942, from Lewis M. Gardner, Caroline Burgess and Jacob Beihmeyer, being the sole heirs at law of Anna G. Watzell. Anna Watzell acquired it by deed dated November 10, recorded 17 November, 1941, from Morris Bildman and his wife, Rose S. Bildman. The Bildmans took title by deed dated October 23, recorded November 19, 1941, from Bertha Shafer; Bertha A. Shafer acquired it from Nick Basaliko and William Calomaris by deed dated October 17, 1940 and recorded November 19, 1940, which was a defective deed and corrected by later recording on November 17, 1941. Basaliko and Calomaris acquired it from Andrew and B. P. Fisher and Henry Sterman, Trustees, who deeded it to them in a default sale under a former deed of trust way 624 back beyond this five-year period.

144 Bryant Street is in the present ownership of Florence E. Urciolo, she having acquired it from Henrietta Weitz by deed dated October 14 and recorded October 15, 1943. Henrietta Weitz acquired it from Mary L. Markell by

deed dated September 29 and recorded October 14, 1943. No further activities there in the five-year period last past.

146 Bryant Street, which is Lot 138, presently owned by Hosea D. Purdue and his wife, Irma L. They acquired it from Cafritz Construction Company by deed dated November 30, and recorded December 6, 1943.

148 Bryant Street, Lot 137, presently owned by John J. Luskey and wife, Mary E., and they took title from Lena Murray Hodge, deed dated March 8, and recorded March 9, 1945.

Well, Hodge was a straw party, she acquired it from John J. Luskey who held title in himself for the purpose of this deed which was obviously to put himself in as tenant by the entirety. There wasn't any further activity in that property for the past five years.

150 Bryant Street, which is Lot 136, is in the present ownership of Pauline B. Stewart. She acquired it from Florence Urciolo by deed dated March 9 and recorded March 21, 1945. Urciolo acquired it from Remo Pizza and his wife Carolina, by deed dated April 3 and recorded the 13th, 1944.

152 Bryant Street, which is Lot 135, is in the present ownership of Florence E. Urciolo, she having acquired it from Ethel V. Fielder, and under deed dated June 10 and recorded July 1st, '43. Fielder took from Hugh A. Thrift and his wife, Mary, by deed dated June 7 and recorded July 1st, 1943. Hugh A. Thrift took title by deed dated April 27 and recorded April 29, 1943, from Betty B. Spencer. Spencer took before that on a deed from Hugh A. Thrift dated March 27 and recorded March 31, 1943. Hugh A. Thrift took from Jacob S. Gruver and his wife, Annie R., by deed dated December 15, and recorded December 28, 1942. Jacob S. Gruver took from Russell H. Pryor, by deed dated October 2nd, 1936, and recorded December 22, 1942.

And, that is all of the lots I examined, Mr. Urciolo, at your request.

Q. Could you tell me who is the present owner of 114 Bryant Street?

A. I didn't examine that one.

Mr. Urciolo: That, Your Honor, is our record for the stability of the 100 block of Bryant Street.

Your witness.

Cross-examination.

By Mr. Houston:

Q. Mr. Gorman, as a title man, you would recognize the names of persons who are known to title men as speculators. Do you not see some of those names appearing, as
626 you run through the list of transfers that you have just indicated?

A. Well, I recognized names that do quite a bit of traffic in real estate. I would not like to call them speculators.

Q. I mean, where you have a lot of transfers going through. Will you go back over there and tell me whether you recognize any such names, go back to 116 Bryant.

A. 116 Bryant?

Q. Yes. I am going right straight back through for this purpose.

A. (Examining file:) No, they are just individuals to me, not familiar.

Q. All right, what about 118?

A. Arms & Drury, Incorporated.

Q. What about Nelson Holmes—the Drury Realty Corporation?

A. Yes.

Q. All right. Lot 120,—I mean premises 120.

A. Premises 120, no there wasn't anything there during the last five years.

Q. All right; now 122 was held since 1905. How about 1924?

A. No, not for the past five years.

Q. 126?

A. Well, the name Urciolo appears. Of course he is a real estate man and he has quite a few transfers.

627 Q. All right; 128?

A. No, they are just individuals.

Q. Who did Urciolo buy from at 126?

A. From Catherine D. Leonard. She apparently held for some time, and I don't know that she is a speculator or real estate operator.

Q. All right. 128?

A. We didn't have 128, did we?

Q. That was the De Ritas, they have held since December 7, 1940.

A. 128—Oh.

Q. Number 128.

A. That is the one I testified, I think, that came from Kelly to De Rita, and they are not operators.

Q. All right; 130.

Q. Just two individuals,

Q. 132?

A. No.

Q. 134?

A. The name of Florence E. Urciolo, is on there.

Q. All right. What about Weitz?

A. What?

Q. Weitz.

A. I have seen her name appear a number of times in the land records. I don't know whether it has been
628 enough for me to classify her.

Q. All right. 136, that is Mr. Hodge, nothing there. 138?

A. Nothing there.

Q. 140?

A. Nothing.

Q. 142, and I am particularly calling your attention to Calamaris and Basaliko.

A. I have seen their names often and Bildman, quite often.

Q. 144?

A. Henrietta Weitz appears again, and also Florence E. Urciolo.

Q. Now, 146, Purdue and Cafritz Construction.

A. Cafritz Construction, of course, appears very often.

Q. 148?

A. Nothing appears there.

Q. 150?

A. Florence E. Urciolo.

Q. 152?

A. Florence E. Urciolo; again, and Hugh A. Thrift, and Jacob S. Gruver; that is about all I can recognize there.

Mr. Houston: That is all.

Mr. Gilligan: I have two or three, if Your Honor please.

629 Cross-examination.

By Mr. Gilligan:

Q. Mr. Gorman, you spoke about the subdivision north of Rhode Island Avenue, beginning at First and going to the east?

A. Yes.

Q. What did you call it?

A. Dobbins Addition to the City of Washington. That is, I know it from V, W, Adams, Bryant, possibly Channing.

Q. You spoke about from Rhode Island Avenue. I was wondering if you know below V?

A. A little more to the south would be on Barbers.

Q. There are two additions?

A. Moore and Barbers.

Q. I wanted to be sure.

A. And that is right, Moore and Barbers.

Q. Because you said from Rhode Island Avenue north, the question was asked:

A. As I have just stated, that is to correct that.

Q. As to 116 Bryant Street, you seem entirely to have overlooked the fact that the Ryans conveyed this property to James M. Hurd and his wife. How is that?

A. Premises 116?

Q. Premises 116.

Mr. Houston: Lot 114.

630 By Mr. Gilligan:

Q. That is right.

A. If they had it, I missed the last reference.

Q. Missed it?

A. If they did.

Q. I simply call your attention to the fact that you did overlook it. Mr. Houston is their attorney, here.

When you see the name Raphael G. Urciolo, do you look at him as a speculator?

A. I said in the first instance I don't call them names. I testified to seeing their names on the land records a number of times, I qualified that.

Q. You do see his name or his wife's, a lot of times?

A. Yes, sir.

Q. Sometimes Constantino Urciolo?

A. I think I have seen that, yes, sir.

Q. Don't you look upon him, as a title man; as a speculator?

A. A real estate man.

Q. A speculator?

A. I can't say that.

Q. You don't know that?

A. No, sir, I can't sit on this stand and call anybody a speculator.

Q. I wouldn't want you to say yes, if you didn't know.

631 Mr. Gilligan: That is all.

Thereupon, THOMAS W. PARKS, was called as a witness by and on behalf of the defendants and, having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Parks, state your full name.

A. Thomas W. Parks.

Q. And you are also a lawyer, are you not, and a member of this bar?

A. I am.

Q. And in active practice?

A. That is right.

Q. And how long have you been a member of the bar?

A. Thirteen years.

Q. You also have a real estate business under the trade name of Thomas W. Parks, and Company, have you not?

A. I have.

632 Q. How long have you been engaged in the real estate business, Mr. Parks?

A. Twenty-five years.

Q. In the location of your office—that is where?

A. 207 Florida Avenue, Northwest.

Q. And in your real estate office, how many salesmen do you employ?

A. Twelve.

Q. Now, do you deal both in white and colored property?

A. Mostly colored.

Q. Do you deal also in some white properties?

A. Yes, sir.

Q. Do you sell to colored and white?

A. Yes.

Q. Do you buy from colored and white?

A. Yes.

Q. Do you represent yourself as a broker for both colored and white?

A. Yes.

Q. And do you collect rents for both colored and white?

A. Yes.

Q. Now, Mr. Parks, have you had any experience in handling property in the general areas which are bounded on the west,—on the east, by First Street, on the north by Bryant Street, on the south by Florida Avenue, and on the west by Second or Third Street?

633 A. I have.

Q. Have you operated actively in that area?

A. Yes.

Q. How long have you been operating, in buying and selling houses in that area?

A. Since 1920.

Q. In other words, approximately 25 years?

A. That is right.

Q. Mr. Parks, when you first—on shortly before you first—began to operate, in general, what was the character of the residents of the population—what was the character of the population residing, say, between Florida Avenue and Bryant Street, First Street and Second Street?

Mr. Gilligan: What was the "character"?

By Mr. Houston:

Q. Racial identification.

A. Substantially all white in 1920.

Q. How did the negro population move—in what direction?

A. North.

Q. And by "north" they have moved all the way up to—how far?

A. Up to Bryant Street.

Q. And are they on Bryant Street?

A. They are.

634 Q. Did you happen to sell any property to negroes on Bryant Street?

A. Yes, we did.

Q. Mr. Parks, did any of your relatives live in the 100 block of Adams Street?

A. Still do.

Q. Were your people the first negroes to move in the 100 block of Adams Street?

A. Yes.

Q. Will you state how long ago that has been?

A. That was in 1928.

Q. And who were those relatives?

A. My father and mother.

Q. And the house—

A. 150 Adams Street.

Q. All right. Mr. Parks, as of this date, October 15, 1945, is there any fairly clear dividing line between the 635 white and negro population, say between Lincoln Road on the east—you know where that is?

A. Yes.

Q. —and, let us say, Fourth Street on the west, from Florida Avenue to the Filtration Plant; say from Rhode Island Avenue to the Filtration Plant?

A. First Street is considered the dividing line.

Q. The neighborhood east of First Street is considered what?

A. White.

Q. And the neighborhood west of First Street is considered what?

A. Colored.

Q. Do you know of any neighborhood west of First Street that is still considered white?

A. No.

Q. Mr. Parks, on Adams Street, there were a considerable number of cases filed from time to time, over a certain restrictive covenant in the 100 block of Adams Street; were there not?

A. That is right.

Q. How many were there—

Mr. Houston: How many would you say, Mr. Gilligan; about six, would you say?

636 Mr. Gilligan: I would say about six; I don't know whether you are asking me or him.

By Mr. Houston:

Q. Mr. Parks, to your knowledge how many could you remember being filed?

A. About a half dozen.

Q. Did that filing prevent the negroes from moving in?

A. No.

Q. Is there a plentiful supply of houses for negroes in the City of Washington at the present time?

A. There is an acute shortage of housing for negroes.

Q. A shortage that is greater for the whites or the negroes?

A. Greater for the colored.

Q. Under the circumstances, have negroes bought properties even though they knew that lawsuits were pending or threatened on account of covenants?

A. Yes.

Q. Why have they done so?

A. Well, because of the acute shortage.

637 Mr. Houston: All right. In the case of Grady versus Garland, if your Honor please, this is a Court of Appeals case Your Honor may be familiar with,— I don't have the particular citation.

The Court: You are not going to have the witness testify as to that?

Mr. Houston: I am simply going to have him testify as to the property that was covered there, in which they refused relief but which have now gone colored.

Mr. Gilligan: I would let him testify. I will admit the colored without him testifying to that.

Mr. Houston: May I give Your Honor the reason and rationel behind this line?

One is that in the Court of Appeals, *Hundley versus Gorewitz*, it indicated that the covenant must not be permitted to stop the normal growth of the city; in other words, the pressure population, and in this particular area it is my purpose to develop through this witness how the pressure population has grown so that no covenant or lawsuits have been able to stop the trend.

By Mr. Houston:

Q. Are you acquainted with the case of Grady versus Garland in 67 Appeals D. C.?

A. Randolph and—

Q. Yes; has that property gone colored since that time?

A. Yes, the whole block.

638 Q. Is the zero hundred block of S Street now going colored?

A. That is right.

Q. Is the zero hundred block of Randolph Place, just south of the same block of the property mentioned in Grady versus Garland, is that now going colored?

A. It is.

Q. I call your attention to Bishopp versus Broadway and a second case, Bishopp versus Urciolo, et al., both involving cases in the 100 block of Adams Street.

You are familiar with the fact that injunctions were issued in those cases?

A. Yes.

Q. Did that stop the negro population from moving into Adams Street?

A. No, sir.

Q. You are familiar with the fact that—familiar with the fact of covenants being on the north end of houses—that is, the houses at the north end of Flagler Place?

A. Yes, sir.

Q. Flagler Street?

A. Flagler Place.

Q. Did that stop negroes from moving in and taking over those very houses?

A. No.

639 Q. You are familiar with the case of Buckley versus Corrigan, are you not?

A. T Street.

Q. No.

A. S Street, between Seventeenth and Eighteenth.

Q. Yes. An injunction was issued in that case, was it not?

A. That is right.

Q. Do negroes occupy the houses covered by that very injunction, now?

A. Yes, the whole block is now colored.

Q. You are acquainted with the case of Hundley versus Gorewitz, are you not?

A. Yes.

Q. Did the covenant stop the negroes from buying into that block, the 2500 block of Thirteenth Street, Northwest?

A. No.

Q. And are they still there?

A. Yes.

Q. Now, if the negro population—is the negro population striding or spreading still farther northward up over Park Place and Warder Street?

A. Yes.

Q. And Keefer Place?

A. Yes.

640 Q. Were there covenants on those houses?

A. Yes.

Mr. Gilligan: Are you sure? If he doesn't know, if Your Honor please, I hope he won't say yes, if he doesn't know.

The Witness: In some of the blocks there were covenants, and not in all of them.

By Mr. Houston:

Q. State which ones.

Mr. Gilligan: I am not objecting, because it is bringing it to a head. Let him go on.

By Mr. Houston:

Q. All right. Let's take Park Place—

A. Yes.

Q. In that case—

Mr. Houston: If Your Honor please, they get Park Road and Park Place mixed up. Park Place runs along the fence around Soldiers Home. Your Honor knows where it is. It goes north.

By Mr. Houston:

Q. Were there any covenants on Park Place?

~~A. Yes, sir, covenants north of Irving Street on Park Place.~~

Q. Well, have negroes swept on past that and taken those houses with covenants?

641 A. Yes, all the way up to Park Road, now.

Q. Now, the streets west of—Can you mention any streets west of Park Place, either—well, let's take the streets running east and west.

A. Well, there were covenants in Columbia Road, Irving and Park Road, streets running east and west.

Q. All right, now—

A. (Continuing) And Warder Street, north of Kenyon—north of Lamont.

Q. Let's take the streets you mentioned running east and west.

A. All-right.

Q. Have negroes taken those houses in spite of the covenants?

A. Yes, sir.

Q. Let's take Warder Street. How far up are negroes now, on Warder Street?

A. Let's see, now—they are up to Newton Street.

Q. How do you explain the fact that negroes have taken those blocks in spite of the objection against them and the presence of covenants?

A. Well, I should think that the white residents, as the colored people get near, desire to move and they frequently get together and decide not to—I mean, decide, rather, to disregard the covenant.

642 Q. Is it also a fact that the negroes pay such high prices?

A. That is an inducement, of course.

Q. As an inducement to whites not to file suit?

A. Yes, and another situation is that the negroes get within a block or two of a strictly white area, and a number of white people move out and rent the properties.

Q. Isn't it true—

A. (Continuing) And then, the other residents who did not rent fear that the neighborhood is not as good as it was, in view of the fact that tenants have infiltrated.

Q. Is it true that negroes never get into a neighborhood, say a white neighborhood, until the neighborhood itself has changed from a home-owning neighborhood to partial tenancy, at any rate?

A. That is true.

Q. And the change in neighborhood—does the change in neighborhood precede the movement of negroes?

A. No, the change generally—I don't think I understand your question.

Q. Well, I am trying to find out as to whether the change in the character of neighborhoods precede, in other words, the change from a home-owners' neighborhood, and it becomes something else prior to the negroes coming in.

A. That is right; yes. It becomes a semi-tenant
643 neighborhood.

Q. So that the change in neighborhood precedes
and does not follow the negroes coming in?

A. That is right.

653 Q. Mr. Parks, at the time that these neighborhoods
began to change, is it usual for speculators to begin
operating?

Mr. Gilligan: Just a minute, if Your Honor please.

What neighborhood is he talking about, if Your Honor
please? He said "at the time these neighborhoods began to
change." What is he talking about? I would like
654 to get it more definitely.

Mr. Houston: We have been talking about, to go
back to yesterday, you will remember we talked about the
100 block—the 1700 block of S Street, Corrigan versus Buck-
ley; we talked about the 1700 block of First Street and the
zero hundred block of S Street, which is Grady versus Gar-
land; we talked about the 100 block of Adams Street, which
is Bishopp versus Urciolo and Bishopp versus Broadway;
we talked about Luray Place, Park Place and Warder
Street.

By Mr. Houston:

Q. Now, in those neighborhoods at the time the colored
began getting in, has it been that there immediately be-
came—or should I say, began, great activity on the part
of real estate speculators on those areas?

A. Yes, they generally buy the rented properties first.

Q. And it is usually the rented properties that the owners
no longer care about holding onto?

A. That is right.

Q. Those are sold first and the negroes get the rented
properties first?

A. Yes, sir.

Q. Now, do the negroes have to pay more than the value
of the properties—market value of the properties, as they
stood in the hands of the white owners?

A. Yes.

655 Q. Do they have to pay more than what would be
the addition by way of renovation and commissions,
added to the purchase price paid the white owners?

A. Yes.

Q. So, what is then the effect of negroes buying into these changing neighborhoods, as far as depreciation of property values are concerned? Is it lower, or what?

A. You mean the prices paid?

Q. Yes, sir.

A. The prices are higher.

Q. And does it afford a new market for those properties in the sense—does it afford a new group of purchasers for those properties when the negroes come in and buy?

A. Yes.

Mr. Houston: Your witness.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Parks, what is the reason for the higher price? Is it because the speculators have to make a profit also?

A. Yes, the speculators do not operate without profit.

Q. And what other reason?

A. The essential reason is the lack of supply.

Q. What do you mean by that?

A. The demand is much greater than the supply of houses.

656 Q. Well, does that apply to all the houses—white and colored?

A. Yes, but the supply of houses for colored is, I think, smaller.

Q. How much smaller?

A. Oh, considerable.

Q. Mr. Park, do you have any white persons in your real estate office learning the real estate business?

A. Yes.

Q. You have spoken, Mr. Parks, of the cases of Grady versus Garland, Buckley versus Corrigan, Bishopp versus Chamberlain, and others in which injunctions issued—

Mr. Gilligan: Just a moment, if Your Honor please. If he did, I didn't hear it.

The Court: I think it is Corrigan versus Buckley.

Mr. Urciolo: I said Buckley versus Corrigan.

By Mr. Urciolo:

Q. You spoke of those yesterday?

A. I think counsel asked me yesterday if I knew of the injunctions and my answer was yes.

Q. And my question is that I think you testified that in all those cases negroes are today occupying all those areas?

A. That is right.

657 Q. Has a suit ever been filed to quiet title by formally declaring those titles void?

A. Not to my knowledge.

Q. Now, Mr. Parks, have you had experience in changing neighborhoods, buying and selling in neighborhoods that are changing?

A. Yes.

Q. Any one in particular?

A. Well, several neighborhoods. In other words, we operate as a rule by blocks.

Q. Now, will you please take on block where you have had six or more houses and state, roughly, if you cannot exactly, the per cent of increase in price that either the white or the colored had to pay. Take Adams, for example. Did you have more than six houses in there, for sale?

A. Yes.

Q. How many did you have?

A. Oh, I suppose about fifteen.

Q. Now, to the best of your ability, what percentage of higher price was paid by either the whites or the colored?

A. I should say that the prices ran about 15 to 20
658 per cent higher for colored.

Q. I have one more question, Mr. Parks.

Have you ever heard of the Lily Pons Project?

A. Yes, that is out northeast on Kenilworth Avenue.

Q. Is that a government project?

A. It is.

Q. Do you know of your own personal knowledge whether a committee was sent there to investigate the number of vacancies?

A. About a year ago, some of the members of our association visited there and found out that there were a large number of vacancies, and the matter was taken up with the official of the War Housing, with a view of trying to per-

suade them to furnish—or to turn that project over to colored, in view of the fact that at that particular time there was no War Housing available to colored.

Q. Was the colored allowed occupancy?

A. No, the answer was that the neighborhood was substantially white and in view of that fact it wouldn't be advisable to turn it over to colored.

Mr. Urciolo: Nothing further.

Cross-examination.

By Mr. Gilligan:

Q. One other question. That development was not under deed covenant or restrictive agreement, was it, either?

659 A. I don't think so.

Q. Mr. Parks, you made a statement yesterday that you had sold a house on Bryant Street in the 100 block. Will you tell the Court what number it was?

A. Well, we sold about ten in there, beginning back in 1926, but all of the houses we sold, with the exception of one, were not covered by covenants. The one house which was covered by a covenant, 144, we sold to a white person.

Q. So that you have never sold any of the 20 houses on Bryant Street, beginning at the alley near First Street and running from the covenanted houses, to colored?

A. No.

Q. You don't do that business?

A. No.

Q. You observe the covenant, as far as you can, in connection with your business?

A. That is right.

Q. Going back to Adams Street, you sold the first house to colored—to your father. Where was that?

A. 150.

660 Q. Was there a deed covenant or a restrictive deed?

A. No.

Q. You made the statement that you had sold fifteen houses to colored, on Adams?

A. Yes..

Q. Any place on Adams Street under deed covenant—you didn't attempt to sell?

A. That is right.

Q. And that is the practice of your office?

A. Yes; except sometimes we examine the title and if we feel that the covenant is not valid, then we sell. If we feel—some of them are, if you recall. We had that up in Irving Street in white properties owned by two joint tenants and only one of the joint tenants signed the covenant and we felt in that case that the covenant was not valid and we proceeded to sell.

Q. In other words, if you thought there was a deficiency and there had been sufficient sales demand for justifying your not observing the covenant, you would do it?

A. That is right.

Q. But not otherwise?

A. No.

Q. You had a man with you, I think—one of your salesmen—by the name of Wills?

A. That is right.

661 Q. Is he still with you?

A. No.

Q. How long ago did he leave?

A. Two years ago.

Q. A colored man?

A. That is right.

Q. No question about that?

A. No.

Q. He don't know whether he was or not, that is the reason I asked you that.

One other question: You are familiar with the case of Corrigan versus Buckley, you stated?

A. Yes.

Q. I think that was the first case on the restrictive agreement that went all the way to the Supreme Court.

A. That is right.

Q. What did that arise from?

A. You mean—

Q. What block?

A. The 1700 Block of S, north side.

Q. North side of it?

A. Yes.

Q. Were not all the houses in the 1700 block of S Street under this same restrictive agreement?

A. I don't think so.

662 Mr. Houston: I don't think so, for that matter.

Mr. Gilligan: If you can tell me in that matter, how many were, and how many were not.

Mr. Houston: I don't recall as to just exactly the numbers, but I can say that John Lewis Smith and James Easby Smith lived in that block and I think that James Easby Smith was the leading counsel in that series of cases. There was to my knowledge a very lovely house at 1705, I think, S Street, occupied by Fox, I think, who is a white real estate man and so far as I know his family still occupies it after 23 years. There was, opposite him, a house of J. Arthur Froe, on the corner of the alley. Mr. Froe was a negro and was recorder of deeds for the District of Columbia back under the Republicans in the 20's. That house was not under covenant. The rest of the houses on the south side of the block, as far as I know, were under covenant.

On the north side of the street, in addition to the Fox house, which was not under covenant, 1735 was not under covenant, which was occupied by Dr. Norman W. Harris; 1739 was not under covenant, I think, and was in the name of Bishop E. P. Jones of the Episcopal Zion Church, and then at about 1745, there was a row of very small houses which had been in the block, oh, I imagine since the Civil War, very old, and they were not under covenant.

Mr. Gilligan: Both sides of the street?

663 Mr. Houston: No, just the one side, the north side, from there up to Eighteenth Street, where there was a Sanitary Grocery Store. I should say that there were approximately six or seven houses.

The way I happen to know is that my father bought one of those houses and was a defendant in a suit brought under that restrictive agreement. George Hayes also bought one of the houses. Augustus W. Brady, another negro member of the bar, bought another one of those houses, and I should like to introduce the fact that those lawyers bought those houses in spite of the fact that there was an agreement on them, in spite of the fact that litigation already had been started in another case. The first case was Corrigan against Buckley, and there was a case against Dr. Scott, and also a case against my father, and three

cases, at least—my father's case, I know, the reason for buying was the pressure of housing. In other words, the point that I was making the other day is, you can't stop it when the population demands become irresistible.

Mr. Gilligan: I have no further questions.

Mr. Urciolo: I have one or two.

Further cross-examination.

By Mr. Urciolo:

Q. Mr. Parks, in answer to Mr. Gilligan's question, you stated that you sold 144 Bryant Street to a white purchaser.

A. That is right.

664 Q. How much did you get from that house, from the white purchaser.

A. We sold that house for, I think,—it was \$4,400.

Q. That house is substantially the same, a two-story brick house, as the other eleven houses that are uncovenanted. How much did you get as an average for the other houses, uncovenanted, in the same block?

A. \$6,750.

Mr. Urciolo: That is all.

Mr. Houston: I have nothing further.

The Witness: I might suggest, Your Honor, that for instance—take the 1700 block of S Street, there are one or two apartment houses. Apartment houses as a general rule do not have covenants so that the apartment houses on S Street, I am satisfied, are not covered by the covenant.

Mr. Houston: I am not so sure as to that.

Mr. Urciolo: I don't think it is material.

The Witness: Investors who own property don't want it covered by restrictive covenants. I have not found an apartment so covered yet.

Mr. Gilligan: At any rate, you are not responsible for the answer that Mr. Houston made.

Mr. Houston: You mean,—you stated about the policy of your office, and in your opinion the neighborhood changing,—you would sell under such circumstances?

665 The Witness: Oh, yes; surely.

Mr. Houston: For example, at Fifteenth and Irving, Northeast, you sold a house to Haywood, did you not?

The Witness: That is right.

By Mr. Houston:

Q. On the theory that the neighborhood was changing?

A. That is right.

Q. So it isn't the existence of the covenant itself; it is the question as to whether you believe there is substantial protection for your purchasers; isn't that the guiding test?

A. That is the test.

Q. So that you wouldn't hesitate to sell, even though there was a covenant, if you thought that your purchaser had a substantial chance of keeping the house?

A. That is right.

Q. Mr. Gilligan: You have not sold any houses in the 100 block of Bryant, from the alley down to 152, which are under deed covenant?

The Witness: No.

Mr. Gilligan: That is all.

Mr. Urciolo: If you were not aware of this case, would you consider that neighborhood colored or white?

The Witness: I would consider Bryant Street as colored. We have also considered First Street as the boundary line; back since about 1925 half the block has been colored.

666 Mr. Gilligan: For many years the lower half of Bryant Street has been fully occupied by colored?

The Witness: That is right.

Mr. Gilligan: And most of the houses occupied.

Thereupon, E. FRANKLIN FRAZIER was called as a witness by and on behalf of the defendants and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Frazier, state your full name, please.

A. E. Franklin Frazier.

Q. And you are located where, sir?

A. At Howard University.

Q. Are you head of a department?

A. Professor of Sociology and head of the Department of Sociology.

- Q. Recently, were you a Fellow at the Library of Congress, by appointment of Dr. MacLeish?
- 667 A. Yes, a resident Fellow.

By Mr. Houston:

- Q. Mr. Frazier, will you state something of your educational qualifications?

A. I received my A. B. from Howard University. I took graduate work in sociology at Clark, Worcester, Massachusetts. I was a Research Fellow, New York School of Social Work, Columbia University. Fellow of the American-Scandinavian Foundation to Denmark. I have been a Fellow of the Guggenheim Foundation to study the negro family in South America and the West Indies. I have been research assistant in the Department of Sociology, University of Chicago, where I received my degree of Doctor of Philosophy.

- Q. And will you state some of your publications?

668 A. I am author of the Negro Family in Chicago, Negro Family in the United States, published by the University of Chicago, author of the Free Negro Family, Fisk University Press; and of Negro Youth at the Crossways, published by the American Council of Education.

- Q. As a matter of fact, under a government program, did you make a survey of Washington?

A. We keep a continuous survey of Washington on, going on at Howard University, but I have made the study for Mayor La Guardia of New York.

By Mr. Houston:

- Q. Will you state, Doctor, if you in your analysis of families and houses, had occasion to consider the question of perpetual covenants against ownership and occupancy by negroes and other minority groups?

A. Yes, I studied that in Chicago, New York and Washington.

- Q. Will you state what the effect of perpetual covenants are, on the natural growth of the city?

Mr. Gilligan: I object to that; I think it is not at all relative.

669 The Court: Sustained.

Mr. Houston: If Your Honor please, I would like to take an exception, on the ground that Hundley versus Gorewitz,—

Mr. Houston: It is in the last three paragraphs of the opinion.

"Furthermore, apart from the market value of property, which, as we have seen, is not the only test, the present appellees are not now enjoying the advantages which the covenant sought to confer. The obvious purpose was to keep the neighborhood white. But the strict enforcement of all five covenants will not alter the fact that the purpose has been essentially defeated by the presence of a Negro family now living in an unrestricted house in the midst of the restricted group, and as well by the ownership by another Negro of a house almost directly across the street. And this is just the beginning.

"The trend is unmistakable, its effect is apparent, and we are brought to conclude that to grant an injunction enforcing the covenant would merely depreciate all the property in the block without accomplishing the purpose which originally impelled its making, while to deny an injunction will leave all of the properties with a
670 value commensurate to the conditions as they now exist. In these circumstances the equities require that we refuse injunctive relief and leave the parties to such remedies as they may have at law."

Now, I should like to say, what I am doing; I am developing it, coming right down to take the effect of this covenant on Bryant Street.

I would like to call Your Honor's attention also to another paragraph.

"However, it is equally well settled that, since the purpose of such restrictions is the mutual benefit of the burdened properties, when it is shown that the neighborhood in question has so changed in its character and environment and in the uses to which the properties therein may be put that the purpose of the covenant cannot be carried out, or that its enforcement would substantially lessen the

value of the property, or, in short, that injunctive relief would not give a benefit but rather impose a hardship, the rule will not be enforced."

Then, in the next paragraph:

"And it is also applicable where removals are caused by constant penetration into white neighborhoods of colored persons. For in such cases to enforce the restrictions would be to create an unnatural barrier to civic development and thereby to establish a virtually uninhabitable section of the city. Whenever, therefore, it is shown that the purpose of the restriction has been frustrated and that the result of enforcing it is to depreciate rather than to enhance the value of the property concerned, a court of equity ought not to interfere."

Now, I am respectfully putting down the general proposition, and I am going to have him apply it directly to the property on Bryant Street.

Preliminary to that—

By Mr. Houston:

Q. Dr. Frazier, what is your own address— house address?

A. 220 Rhode Island Avenue, Northwest.

Q. Are you thoroughly familiar with the properties from Second and Rhode Island Avenue, north up to the Filtration Plant and over to Howard University?

A. Yes.

Q. How long have you lived in the neighborhood of Second and Rhode Island Avenue, Northwest?

A. Ten years.

Q. So that—

A. (Interposing) This is the beginning of the eleventh year.

Q. How frequently do you go up or down Second Street, and how frequently are you in the neighborhood of Second and Bryant Streets?

672 A. I go up and down four times a day, two going to Howard University, and two coming back.

Q. Dr. Frazier, in your study have you had occasion to examine and consider the effects of perpetual covenants on community growth?

A. Yes—

The Court: Don't answer.

Mr. Gilligan: I object to the question, if Your Honor please.

The Court: Had you finished your question?

Mr. Houston: Yes, sir, I have finished that question.

The Court: Objection is sustained.

By Mr. Houston:

Q. Now, are you familiar, Dr. Frazier, with the character of the racial occupancy of the different houses on Bryant Street?

A. Yes.

Q. In the 100 block of Bryant Street?

A. 100 Block of Bryant Street—yes.

673 The Witness: Yes, I am fairly well acquainted with that, those specific houses. I mean, for instance, what do you want to know? That is, if I can say it.

By Mr. Houston:

Q. I mean that block is occupied by both white and colored.

A. Yes.

Q. Now, has there been—

A. The movement has been over toward the east.

The Court: You have answered the question.

By Mr. Houston:

Q. Now, in which direction has the negro population moved from, say, Second and Rhode Island Avenue, in the last ten years that you have been in the neighborhood?

A. It has moved eastward.

Q. Has it moved also northward?

A. Northeast of it—northeasterly, I would say. It has followed what we call—

The Court: Wait a minute. You have answered the question.

By Mr. Houston:

Q. Has the movement followed any well-established, recognized sociological principles?

Mr. Gilligan: If Your Honor please, I object to the question of sociological principles.

The Court: Sustained.

By Mr. Houston:

Q. Are you able to observe in this movement any pattern which has been more or less uniform, which has been uniformly in existence in other movements, in other cities?

A. Yes.

Q. Will you state what that pattern is?

A. The movement has been along areas that are vulnerable to the incoming negro population, because you have there, for instance, that municipal plant of the water department, and the garbage disposal unit, I think, and as negroes infiltrate into neighborhoods, it is generally along such areas, and another noticeable feature is that the foreign born element is high in that area, and negroes generally sort of infiltrate along such areas.

Q. Does obsolescence play any factor in making the neighborhood vulnerable?

A. Yes, you can note the age of homes. For instance, along that area about fifty per cent of the homes are about 50 years old, or something like that. We discovered in our laboratory at—

675 Q. (Interposing:) And where houses have been residences for 40 years or 50 years—that usually indicates that in that period of time there has been usually a complete change of ownership in the sense that the first owners have either died, moved away, sold, or otherwise disappeared.

A. Yes, that generally happens.

We have what we call "succession," where when an area gets old, we notice that it loses its residential character and one or more racial groups come into the area. Negroes are one group. Quite often Italian or Poles come into these areas where there is deterioration, but you have different classes. Some areas become home-owning areas. Certain

classes of colored persons buy, just as on Rhode Island Avenue. We moved in ten years ago and we displaced the white population but that street is a home-owner's street and most of the people bought homes and there is a decided appreciation of the neighborhood.

Q. Is there such a thing as a residential cycle of home ownership and tenancy and sub-tenancy and complete changeover by the infiltration of another group?

Mr. Gilligan: Is that another way of following the sociological inquiry? I object to it.

Mr. Houston: Of course it is.

The Court: Sustained.

676 By Mr. Houston:

Q. An ordinary instance is, has the homogeneity of the neighborhood been destroyed prior to the infiltration of the negro?

Mr. Gilligan: If Your Honor please, I object to that. If he will keep it to this particular issue before us, I have no objection.

The Court: Objection is sustained.

Mr. Houston: Well, I am introducing this witness as an expert to testify as to the effects of certain phenomena which have already been introduced as facts in the record, and on that basis I should like to ask a hypothetical question, that if within an area of 20 houses you should find at least six or seven of them have been either bought or rented by Italians, and one by an Assyrian, would you say that the homogeneity of that neighborhood, as an American white neighborhood, has already been destroyed?

The Witness: Yes.

By Mr. Houston:

Q. Would you consider the neighborhood in the 100 block of Bryant Street, where out of 31 houses, 11 houses were occupied by negroes, and five houses were occupied—five or more houses were occupied—by Italians and Assyrians, would you consider that a white neighborhood?

A. No.

Mr. Houston: No further questions.
The Court: Mr. Urciolo.

Cross-examination.

678 By Mr. Urciolo:

Q. Dr. Frazier, assuming that in this 100 block of Bryant Street there are 20 covenanted houses, perpetually against negroes, or persons of negro blood, and 11 houses with no restrictions and completely occupied by colored. Now, in the group of 20 houses restricted perpetually against
679 negroes, six of these 20 restricted houses are occupied or owned by foreign-born, southern Europeans of the first generation.

Would you then say that the cycle has already changed?

Q. I mean, Dr. Frazier, has the homogeneity of the neighborhood changed?

A. Certainly.

680 Q. Dr. Frazier, to put the question this way—would it be very likely, in a neighborhood where there are 20 covenanted houses and 11 uncovenanted houses, and of the 20 covenanted houses seven or more houses are either occupied, or owned, by foreign-born southern Europeans—is the negro very prone to infiltrate such a neighborhood?

A. Yes.

Mr. Urciolo: That is all.

The Witness: It was vulnerable socially and economically. It has lost its residential character. The covenant excluding the negroes has become unrealistic because of economic factors such as the houses being thrown on the market, older generation has moved out, so negroes and foreign-born can come in, so that the foreign-born and negroes are really behaving each to a similar situation in a city, and not the negro following the foreign-born so much, but both on these groups, because of their economic

681 status, because of their social status, because they are identifiable sometimes because of color and other characteristics, they move into such an area as that.

By Mr. Urciolo:

Q. Is this social factor increased by the fact that the countries wherefrom these immigrants came have no color line?

A. Pardon, I didn't hear you.

Q. Is sociability increased by the fact that the countries, the provinces of these immigrants, the countries providing these immigrants, had no color line?

A. Oh, yes.

Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Gilligan:

Q. Doctor, what does homogeneity mean, as you have been using it?

A. What?

Q. What does homogeneity mean, as you have been using it?

A. When I have used "homogeneity" I have meant that the families inhabiting a certain neighborhood come from a same racial and cultural background and on the whole, we find they represent the same social status.

Q. You don't mean by that that those Italian families—there are three families that are defendants in this case—

682 Mr. Houston (Interposing): Plaintiffs.

By Mr. Gilligan:

Q. (Continuing:) —plaintiffs in this case—you don't mean that they are of the same social status as the colored, who live down at the lower end of the block, do you?

A. Well, social status has reference to one's position in his community and his contacts. Those Italians, most likely go to a Catholic Church and the negroes go to a Protestant Church.

Q. You don't say yes to that, that they are of the same social status.

A. I would have to hear more about those people before I could answer a question like that.

684 By Mr. Gilligan:

Q. You say that in this particular section that you described for Mr. Houston, west of First Street, North of Rhode Island Avenue, that the movement is toward the east. Just what do you mean?

A. I mean that as far as I have been able to observe, and from our statistics on the census tract, there has been an increase in the negro population in those two census tracts and the increase has been greater in the western census tract than the more easterly census tract, which shows a movement toward the northeasterly with Rhode Island Avenue cutting across—

Q. Let me ask you, to see if you know of your own knowledge. Let's forget the census tracts.

Do you know how many negroes live on First Street and to the east of First Street, to Lincoln Road, From Rhode Island Avenue north to the Soldiers Home grounds?

A. No, I can't tell you that.

Mr. Gilligan: I have no other questions.

685 Thereupon, Miss DORIS G. WILKINS was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:—

Direct examination.

By Mr. Urciolo:

Q. Will you please state your full name?

A. Doris G. Wilkins.

Q. What is your work, Miss Wilkins?

A. Social Welfare Consultant in the Landlord & Tenant Court, employed by the Board of Public Welfare.

686 The Witness: And Social Consultant in the Landlord & Tenant Court.

Q. Miss Wilkins, would you explain please what your duties are?

A. My duties are to determine what the difficulties are between landlord and tenant and to work out an adjustment thereto.

Q. Your adjustments are made for persons that are about to be evicted, in general?

A. That is a portion of my work, because the problems in the Landlord & Tenant Court involve other than possession suits, of course. There may be disputes as to the amount of rent due, or complaints about repairs, or any number of problems wherein the landlord and tenant differ, and they also have involved questions of possession when the landlord for one reason or another seeks possession of the property and the tenant is having difficulty in finding another place to live.

Q. Miss Wilkins, you handle both white and colored applicants, do you not?

A. Yes.

687 Q. You work in the Municipal Court and your work is not confined to either white or colored persons in the landlord and tenant relationships, is it?

A. No.

Q. You handle both?

A. That is right.

Q. Now, Miss Wilkins, to the best of your ability, will you please state how long you have been in there?

A. I have been there four years in November.

Q. Now, Miss Wilkins, will you please state whether, if you can, the applicants for assistance are mostly colored or white?

A. A majority of the persons I serve are colored.

Q. How large a majority?

A. About 90 per cent.

Q. I understand that you attempt to procure housing accommodations for your applicants when they are about to be evicted.

Mr. Gilligan: Just a moment. If Your Honor please, don't object to the general idea of her help, and on; but, if he would confine it to the two cases before you, I think it would be entirely all right; but, the general question, I think it is entirely out of order and I object.

By Mr. Urciolo:

Q. Miss Wilkins, do you happen to recall whether any colored applicants have come to you seeking housing accommodations on Bryant Street, Northwest, in the 100 block?

A. I don't recall.

Q. Miss Wilkins, have you found it more difficult in procuring housing accommodations for colored, than for white?

A. No.

Q. You believe, then, that the scarcity is as great for the white as it is for the colored?

A. I believe so.

Q. Did you not state that 90 per cent of your applicants were colored?

A. Yes.

Q. And you still state that—

The Court: You are cross examining your own witness.

Mr. Urciolo: I am sorry; one second, please.

By Mr. Urciolo:

Q. Miss Wilkins, have you ever heard of the Lily Pons Project?

A. Yes.

Q. Have you had an occasion to call there for housing accommodations?

A. No. I cannot actually answer your question as you put it. The Lily Pons Project is administered by the National Housing Authority and my dealings are never directly with any projects. My referrals are to the National Capital Housing, as such; the placements are made from their own headquarters, and I have no control nor do I

make suggestions as to which project applicants are or shall be placed in.

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690 Thereupon, RAPHAEL G. URCILO was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

691 The Court: Is he your witness?
Mr. Houston: Yes, sir.

Direct examination.

By Mr. Houston:

Q. Mr. Urciolo, I would like to find out from whom you bought the properties on Bryant Street, whether you bought them from the original owners—did you buy the properties on Bryant Street from the persons who were living in the premises at the time you bought them?

A. Well, 118 Bryant Street was bought from Patrick D. Holmes, a real estate operator.

Q. Is Patrick D. Holmes known to the Washington real estate brokers as a speculator?

A. He is.

Q. Did Patrick Holmes live in 118 Bryant Street at the time he sold it to you?

A. He did not.

Q. How about the Stewart house, 150 Bryant Street, 118 Bryant Street, incidentally, is the Rowe house, is it not?

A. That is the Rowe house.

Q. Now, let's take the Stewart house; that is 150.

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692 A. I bought that from Remo Pizza, and his wife, Carolina Pizza.

Q. Are they Italians?

A. They are Italians.

Q. Do you know whether they are first or second generation?

A. First generation; through a real estate agent, not directly.

Q. Bought through a real estate agent?

A. Yes, I bought through a real estate agent.

Q. Who was the agent, if you remember?

A. I don't recall. A salesman in my office handled the transaction.

Q. All right. Now, let's take the Savage house, is that 134?

A. Yes.

Q. Whom did you buy that from?

A. I bought that, to the best of my recollection, from Mr. McCurdy, a real estate agent.

Q. Did he live in it?

A. No. It was rented to Mrs. Anna Pettit, as a 693 monthly tenant.

Q. Mrs. who?

A. P-e-t-t-i-t.

Q. Now, let's take the other properties. 126 Bryant Street?

A. I bought that from Mr. Frederic Richmond, an attorney employed by the United States Government.

Q. Did he live in it?

A. No.

Q. Incidentally, is he the same Richmond that sold to Hurd?

A. I don't know that. I am 99 per cent sure that he is.

Mr. Houston: If Your Honor please, Mr. Gilligan and I stipulate that Ryan sold to Hurd, and that Ryan was not residing on the premises, that he was a non-resident, and they don't know where he is.

The Court: All right.

Mr. Houston: That he was a non-resident at the time he sold to Hurd.

The Court: Yes.

By Mr. Houston:

Q. One forty-four Bryant Street?

A. I bought that from Barney O. Weitz, a real estate 694 speculator who had bought from Roland Fowler, who was a real speculator, who had bought through Thomas W. Parks, a real estate agent.

Q. Now, who did Weitz buy from?

A. Weitz bought it from Roland Fowler.

Q. Spell that last name.

A. F-o-w-l-e-r, Fowler.

Q. And Fowler bought from whom?

A. Fowler had purchased through Parks, a real estate agent, and he got it—I don't know from whom.

Q. All right. Did Weitz or Fowler live at 144 Bryant?

A. No.

Q. 152 Bryant Street?

A. I bought that from a real estate agent; I don't recall whom. I know I did not buy it direct, but from Hugh Thrift, who dabbled in real estate.

Q. Is Hugh Thrift living or has he lived on Bryant Street, at 152?

A. The house was vacant.

Q. Do you know whether he had lived at 152 Bryant?

A. All I know is that the previous occupant was a tenant. If he had ever lived there, I don't know.

Q. But at the time the last occupant before you bought—was a tenant?

A. Was a tenant.

695 Q. Do you know whether several real estate operators had been active recently in Randolph Place, where ultimately the particular property has come into the hands of negro ownership?

A. At least a dozen.

Q. Can you name some?

A. Myself, Raphael G. Urciolo; Barney O. Weitz—

Q. How about any negro real estate operators?

Mr. Gilligan: I don't think you should lead him. Let him answer.

The Witness: I have them on the tip of my tongue. The Murray Company.

By Mr. Houston:

Q. Murray Company?

A. R. G. Dunne,—the Park Road Housing Commission.

696 Q. Is it "Housing Commission" or "Housing Company"?

A. Commission.

Henry I. Berman; Mrs. Platsohn. That's enough.

Q. How about any negro real estate firms operating in there on M Street?

A. John W. Rouse—he purchased several.

Q. On the zero hundred block of S Street, Northwest: Has there been any great activity recently by speculators in the zero hundred block of S Street?

A. Well, I know as a fact of only one.

Q. Who is that?

A. Barney O. Weitz.

Q. Do you know whether Ralph has been in the zero hundred block of S Street?

The Witness: I remember now—John W. Rouse
697 bought at least two, and I am quite certain that Alvin
Fisher has bought some; and I know that Patrick
D. Holmes either owns or controls in straw parties, two
or three.

By Mr. Houston:

Q. Who was the first man you mentioned?

A. Barney O. Weitz.

Q. Take the 100 block of Adams Street. At the time when that changed—certain houses in there, from white to colored. Were there more than one or was there more than one real estate operator operating in the block?

A. There were, in fact, in one house, Patrick D. Holmes and myself sold it to each other about five times.

Q. All right. Well, then, were you there operating?

A. I was.

Q. Was Holmes?

A. He was.

Q. Do you know whether anybody else was operating in that block?

A. Lanigan,—Frederic Richmond.

Q. Lanigan—is he any relation to the Lanigan on Bryant Street?

A. I don't know. I know he is in the real estate business.

Q. All right. Anybody else?

A. I don't recall any others; it was about four years ago.

698 Q. In the 100 block of Bryant Street, in addition to the people that you have listed: Holmes, McCurdy, Richmond, Weitz, Fowler, Thrift—do you know of any other real estate operators operating in Bryant Street, in the 100 block?

A. Well, the Cafritz Construction Company—I don't know whether you would call it operating—they had to take it in because the payments were not made on the house and then they sold to the Purdues, I think, about two years ago.

Q. Cafritz Construction Company, of course none of their officers ever occupied this Purdue house?

A. No.

Q. Now, Park Place. Can you tell me in the areas in Park Place—

The Witness: I don't know enough about Park Place, Mr. Houston, to answer. My recollection there is quite vague.

By Mr. Houston:

Q. How about Warder Street?

699 A. There—there was real activity among speculators.

Q. Could you mention some?

A. Barto Crivella—

Q. (Interposing:) I am talking now in the covenanted area.

A. I am, too.

Q. How do you spell that?

A. C-r-i-v-e-l-l-a.

Q. All right.

A. Mr. Bello, a negro agent or a Cuban agent; he speaks English with an accent; I don't know what he is. He looks colored.

Pat Troiano; I don't want to forget myself, Raphael G. Urciolo; John W. Rouse; there is a man on First Street, in the 1500 block—I can't remember his name—

Q. (Interposing:) Do you know whether the Parks Company operated on Warder Street?

A. I do not know that.

Edward Wills operated up there. That is all. I can remember for the present.

Q. All right. You are generally familiar—

A. I am sorry, I can remember another; Martin Isen.

Q. From your own operations, you are familiar with the general prices that were paid in these different areas that

I have indicated. Can you state whether the negroes
700 had to pay an advance over what the whites paid?
Over and above commissions?

A. At least—

Q. (Interposing:) And the cost of any repairs and renovations?

A. At least \$2,000 more, and I don't know of a single exception to that case, except one that I sold, being an all-cash transaction for \$1,500 profit, and that was through Penn Real Estate Company. They are the ones that I was trying to remember, on First Street.

Q. Henry Penn?

A. Henry Penn.

Q. Can you state, Mr. Urciolo—are you familiar with any of these cases in which injunctions have issued against the negroes—

A. Yes.

Q. Will you state whether or not the property has gone back into friendly white hands so that later the negroes can get it back again?

A. I have never known of a case where an injunction has issued and the negroes have been forced out, except in two instances: In the Hundley versus Gorewitz case, on Thirteenth Street—the Hundleys had to move out; and in the Haywood case in Fifteenth Street, northeast—they were forced out,—in the other cases always something has happened, usually an abandonment or a compromise, 701 and the negroes are still there.

Q. Do you know whether in the Hundley case, title was so placed that it was available to the Hundleys—would have been available to the Hundleys later on?

A. Oh, yes.

Q. Do you know whether in the Haywood case, that the title was so placed that it will be still available to Haywood at the expiration of the covenant?

A. That is only my understanding; I am not certain of it.

Q. Do you know of any case, except where the negroes have compromised by re-selling to the whites at a profit to themselves, that the negroes have not put the property in some white person's hands where it would be available to them later on?

A. Yes; you hear this often—that is often being done: In other words, if an injunction issues, especially in the case of where a restrictive agreement has only a year or two or three to run, and an injunction issues, then the gen-

eral practice is, the negro will put it in some white straw and have a separate agreement under seal that when it expires it will deed to them.

Q. On Adams Street—in the 100 block of Adams Street, right back of Bryant Street—can you state about how many cases, if you know, were filed against the 702 negroes on that street?

A. Well, two in which I was involved, and five others, mentioned by Mr. Gilligan as having previously been filed.

By Mr. Houston:

Q. In the two that were filed against you, were injunctions issued?

A. Injunction was issued in both cases.

703 Q. What was the dividing line?

A. Mr. Gilligan contended that North Capitol Street was the dividing line; I am sorry. I retract that answer.

I don't know what Mr. Gilligan contended was the dividing line. All I know is that several real estate men testified was the dividing line. What Mr. Gilligan's contention was, I don't know, or I don't recall.

Q. Do you recall—do you happen to recall the terms under which those cases were terminated, which Mr. Gilligan terminated as his cases? If you don't, say you don't.

A. Vaguely, I do. What happened was that the injunctions were granted. The two cases were consolidated and were sent to the Court of Appeals.

Q. But you don't remember—you weren't present when Mr. Gilligan discussed the conditions under which he was willing to abandon those cases?

A. I don't recall.

Q. All right. Were the cases abandoned?

704 A. The cases were abandoned. The negroes are still there.

Q. In the Adams Street cases, was any negro able to buy the property on Adams Street in the 100 block for the price that was given the white owners plus commissions and plus repairs?

A. None.

Q. Did he pay less or more?

A. They paid at least \$2,000 more for each and every house, and in some cases as high as \$4,000 more.

Q. What will be the effect in your opinion—How long have you been in the real estate business?

A. Actively and exclusively for ten years.

Q. Your operations are not confined to these neighborhoods, either vulnerable neighborhoods or mixed neighborhoods and changing neighborhoods, are they?

A. Definitely no.

Q. Nor is your business confined to the types of houses which are represented, I mean the market value or values which are represented by the houses on Bryant Street, Randolph Place, Adams Street, and so forth, that we have talked about?

A. Sorry, I didn't understand.

Q. Do you sell houses, or do you handle houses much more valuable than the houses on Bryant and Adams and Randolph?

A. Why, yes, I sold houses for \$25,000. I sold one last week for \$19,000. I bought one last week for \$20,000; that is, \$20,500. But generally, it is the smaller type house that I sell, buy and sell, because there is greater demand. In other words, if you buy an old house and fix it up yourself, it pays you to do so because the average buyer won't buy a dilapidated house and we get it for what we term a song.

Q. Well, now, tell me as to whether there is a greater shortage of houses for negroes than for whites, in the District of Columbia, in the level of houses represented by middle-class houses, as far as you know.

A. I can, with assurance, state that the shortage exists for all, both white and colored; but that the shortage is at least five times as great for the colored than it is for the white.

Q. Will you state in your opinion as a real estate man what is going to be the effect of the new housing construction program beginning now, with the termination of the war, on the desirability of these older houses, the type of Bryant Street and Adams Street, for white occupancy and ownership?

* Mr. Gilligan: I object to this if Your Honor please. I don't think that it makes a bit of difference what his opinion is about that.

The Court: Sustained.

By Mr. Houston:

Q. Were there any vacancies in the Bryant Street properties at the time you bought?

706 The Witness: Yes.

By Mr. Houston:

Q. What were they?

A. 152 Bryant Street.

Q. And how long, if you know, had it been vacant?

A. I don't know.

Q. Any others?

A. None, to my knowledge.

Q. Do you know whether 116 Bryant had been vacant for any time prior to the Hurds buying?

A. I don't know for certain. It seemed as if it were locked up, but I never knew for certain.

Q. Did you sell—Did you make the first sale of a house on Bryant Street to a person who is alleged to be a negro?

A. I most certainly did not.

Q. How long was it after the sale—how long was it after any sale of a covenanted house to a person alleged to be a negro, before you sold?

A. At least a year.

Q. At the time you purchased on Bryant Street, had the Italian families already acquired properties and moved in, in those covenanted houses in Bryant Street?

707 A. Yes, sir.

Q. Now, will you state how many Italian families had either bought or moved into Bryant Street at the time you bought?

A. Well, the Marchegianis, the Giancolas, the De Ritas, the Pizzas, and either before or comparatively simultaneously thereto, the Garzonis.

Q. Now, Marchegiani has what house, if you know?

The Witness: It is 146.

Mr. Gilligan: Read the record, please:

(Record read by reporter.)

By Mr. Houston:

Q. Now, did any other Italian families move into the neighborhood, since you bought?

A. Yes, I put in an Italian family in 152 Bryant Street.

Q. What is the name there?

708 A. Mrs. Amoia.

Q. All right.

A. I couldn't get anyone else to rent it. I promised her that I would rent the upstairs for her; she had been put out of her house, and I advertised in the Star several times, advertising two large rooms, kitchen and bath and all utilities for \$35 a month, and to date, I had been unable to rent the apartment for her because colored live next door.

Q. And is that an uncovenanted house?

A. That is a covenanted house.

Q. 154, you said, was covenanted?

A. 154 is covenanted.

Q. I say 154 is uncovenanted, is that right?

A. Oh, yes; that is occupied by negroes.

Q. And you, Mr. Urciolo, are Italian, are you not?

A. I am.

Mr. Houston: I think that is all.

Cross-examination.

By Mr. Gilligan:

Q. I have three or four questions, Mr. Urciolo. 152 Bryant Street—you bought that from Mr. Hugh Thrift?

A. Through an agent, not direct.

Q. Didn't you see Mr. Thrift himself?

A. I don't recall.

Q. Do you understand why he was selling the house?

709 A. No, sir.

Q. You don't know whether or not he had sold it to a negro and that he had had the deal set aside in order that he might sell it to a white person? You ought to remember that.

A. No—yes, I remember Mr. Parks mentioning something on the stand here, but not at the time that I bought it. Had I known that, Mr. Gilligan, I probably would have offered him \$2,000 less because I would have known that he could not sell it at any price.

Q. Suppose he lost a thousand dollars in getting the colored people to give up the property in order that he might sell it to white, would you still say that you would have offered him \$2,000 less?

A. Yes, I know that I can sell those properties and set my own price, when, if I can find a covenanted house, adjacent to negroes, I can practically set my own price.

Q. It doesn't make any difference whether it is adjacent to negroes or not, does it?

A. What?

Q. It doesn't make any difference to you whether it is adjacent to a covenanted house, or not, does it?

A. No, because I can set the price so low that I can always find some white family to buy or to rent it at half the rent and still make money.

Q. As a matter of fact, the reason—as a matter of fact, the only reason you have not sold 152 and the other two houses you still own, to negroes, is because you are just waiting for this case to get out of the way, is it not?

A. I wouldn't say that. I didn't wait for this case to get out of the way to sell the others. The reason it hasn't been sold is because nobody offered me a contract.

Q. In other words, if the contract were offered you right now for the purchase of those three houses to anyone, by negroes, and it met your price, you would sell it to them?

A. I certainly would. I am contemplating now 114 Bryant Street which has been offered to one of my salesmen today, there—or rather, day before yesterday, and I said, "Well, ask him how much he wants," and I was told that all they are waiting for is the outcome of this suit so that they can raise the price.

Q. They are waiting, but I am asking you about yours.

A. Myself, I will sell to whomever gives me my price.

711

Q. Let's

A. Not 152, though, because 152—I have senti-

mental reasons and unless I get a very huge price it is not on the market; in other words, the other two are.

Q. Mr. Houston asked you about Randolph Place.

You were a defendant, I believe, in the case at 55 Randolph Place, were you not?

A. I and about a dozen others.

Q. 55 was the first case that was brought?

A. I was the defendant.

Q. And the Jeffersons, I believe, were the other defendants?

A. Yes.

Q. And in that case, was there a judgment rendered against you and the different Jeffersons?

A. There was.

Q. A permanent injunction and a setting aside of the deeds?

A. I don't recall the terms, but I know that there was an injunction.

Q. In connection with Randolph Place, R Street, just one block south of Randolph Place, that is, is it not?

A. Exactly.

Q. What is the color of R Street, so far as negroes and whites are concerned?

712 A. In the 100 block, northwest?

Q. No, the unit block.

A. The unit block of R Street, Northwest?

Q. Immediately behind the block at 55, where you bought and where the injunction was issued.

A. To my best recollection, that is now colored. These neighborhoods are changing so fast it is hard to keep up with them, but I am quite sure they are colored.

Q. How long has R Street been colored in that unit block?

A. In the last year.

Q. How about 15 years?

A. R Street?

Q. Yes, in the unit block, between North Capitol and First Street, do you know as a fact that the block has been colored at least 15 years, maybe 18 years?

A. No, I didn't know that.

Q. All right.

What about Seaton Place?

A. Seaton Place went colored about a year and a half ago.

Q. Yes, so that at the time the injunction was granted against you on R Street—I mean on Randolph Place—the street immediately to the south of you—Randolph Place was entirely occupied by colored, and Seaton Place, a 713 block and a half above, was largely occupied; that is correct, is it not?

A. At least one third.

Q. And First, itself, which adjoins Randolph Place in the unit block, was all colored, down there?

A. Correct.

Q. And everything to the west?

A. Everything to the west.

Q. And to the south?

A. Oh; 98 per cent, anyway.

Q. I would like to ask just one or two questions about Adams Street.

Can you tell the Court just how Adams Street, in the 100 block, divided up as to covenants and noncovenants?

A. Yes, I can.

Q. Tell him, if you please.

A. Adams Street, from the houses 112 to 134 were perpetually covenanted against negroes; the houses 136 to 142, across the street—

Q. (Interposing) Can't you take the south side of the street, while you are on it?

A. That is the south side.

Q. All right. Flagler Place comes in there.

714 A. Yes, Flagler Place was perpetually covenanted against the negroes; four houses adjacent to 134, and immediately in the rear of 134—

Q. I am not asking about Flagler Place. I am asking about Adams Street.

A. Adams Street on the north—

Q. Let's finish Adams Street, on the south side.

A. All right, on the south side, all other houses to the west on the south side, of Adams Street were occupied by negroes.

Q. And uncovenanted?

A. Uncovenanted.

Q. How many were there?

A. About ten, I don't know exactly.

Q. Or more?

A. Or more, I don't know?

Q. Go directly behind that block on Bryant Street which is in the suit, that is, on the north side:

A. The houses on the north side of Adams Street, the houses 115 to 133, inclusive, were occupied entirely by negroes.

Q. Uncovenanted?

A. Uncovenanted.

Q. Very well.

A. Those houses, 135 to and including 151, were perpetually covenanted against sale or occupancy by negroes; 153 to about 177 were uncovenanted, and exclusively occupied by negroes. That is the entire statement, with the exception that I also maintained that the people in 116 Adams Street, which had been there seven years, were and still are people of the colored race.

Q. But so far as the covenanted and uncovenanted houses are concerned, you have given the true picture of that street?

A. I trust I have.

Q. Suppose I put it this way: There were 31 houses uncovenanted and 25 covenanted; is that correct?

A. That is about correct—that is correct.

Q. And on the north side, 9 houses in the middle of the block were covenanted, and all to the east of those and all to the west of those were uncovenanted?

A. That is correct.

Q. On the north side of Adams Street, in the middle of the block there were about 9 houses that were covenanted, had deed covenants, perpetual covenants?

716 A. Correct.

Q. And all the houses on the east of those 9 in the middle of Adams Street in the 100 block, and all of the houses to the west of those 9 in the 100 block of Adams Street were uncovenanted and occupied by negroes?

A. That is correct.

Q. So that with all the speculators with whom you have dealt and who have dealt in houses in that community, you

seem to be practically the only one deliberately selling to negroes, where there are covenants, don't you?

A. I beg pardon, I am not:

Q. You have testified that you dealt with these
717 speculators, one or two cases, there were a number of times before they got to you, but always in the end, they came into your possession?

A. That is not correct.

Q. These houses that we are now talking about—

A. Adams Street and Bryant Street, yes; but as to the others I testified to, all those other injunctions I testified to,—they were not against me.

In the Haywood case, it was against Barney O. Weitz, and in the Horowitz, Patrick D. Holmes.

Q. I am talking about these in which you are concerned now. After all, was said and done, all of this speculative buying and selling was out of the way, you became the sole owner and you sold to negroes where there were covenants in these cases, that is what I am talking about.

A. Except Frederick Richmond, or Ryan, whoever he is, that sold it first.

Q. Except the Hurd house.

A. Then, the answer is yes.

Mr. Houston: Let me find out. Is Mr. Gilligan talking about the Bryant Street houses, or is he talking about Bryant Street and Adams Street and Randolph Place, although—he said “these”, so I don't know.

By Mr. Gilligan:

Q. Let's put it Bryant Street, Adams Street. Ran-
718 dolf Place, in which you have been dealing, they finally get in your hands and you were the real estate man that sold them to negroes despite the covenants.

A. I sold to—I sold 55 Randolph, and I sold several others thereafter, but there were also other agents who sold.

Q. And you are also a defendant in the suit on Randolph Place for a number of houses you sold to negroes, are you not?

A. Yes.

Q. Which has never come to trial yet?

A. That is correct.

Q. And all the houses on Adams Street that you own, which were covenanted, you sold to negroes?

A. Certainly.

Q. Did you not also frequently put the negroes into the houses practically at the same time before any action was brought against you, sort of a concerted matter?

A. Not at the same time, no.

Q. About the same time?

A. Two moved in at the same time.

Mr. Houston: Just a moment. If Your Honor please, the seller does not put them in the house, he does not put me in a house, I put myself in my own house. Therefore, I object to the question.

Mr. Gilligan: Let's put it that way: Mr. Urciolo buys six houses and Mr. Urciolo sells six houses to negroes
719 and puts them into the houses about the same time—

Mr. Houston: Wait a minute, you say "he" puts them in.

Mr. Gilligan: The seller, yes.

Mr. Houston: The seller does not put anybody into a house at all, I put myself in my house, and a purchaser puts himself in his own house.

Mr. Gilligan: He buys the house and goes into it—

The Court: Let us go ahead with the examination.

Mr. Houston: I object to the question.

The Court: He may answer.

By Mr. Gilligan:

Q. Let me ask in regard to the Adams Street houses, the houses that you bought and sold to negroes, you sold them and you saw to it that the houses were occupied practically all at the same time by those negro purchasers?

A. The first two were in within one day or so of each.

Q. And the other three were shortly thereafter?

A. I don't know how much more, not far thereafter. You see, there was a plenty of houses then.

Q. So that there was no trouble about the vacancy.

A. No trouble at all.

Q. And you saw that those houses were vacated and the negroes moved in, just about the same time before any action could be brought, in other words, put it this way—the idea in your mind was perhaps that the mass oc-

720 cupancy of these covenanted houses by negroes would unquestionably defeat any action that might be brought against you?

A. I wouldn't say that was in my mind.

Q. You won't say it was not in your mind?

A. It is in there now, you put it there; but that is about all.

Redirect examination.

By Mr. Houston:

Q. Mr. Urciolo, if you can buy a house and get it vacated before you sell it, so that you can tender the purchaser a vacant house, can you get a higher price for a vacant house than you can get for a house which is owner-occupied or tenant-occupied?

A. We add as a rule of thumb, ten percent to be able to deliver a vacant house, to the price.

Q. So that race has nothing to do with it, it is a question of making money, if it is possible to obtain the possession of the house before you sell it?

A. Exactly. For example, in a house last week I would have paid \$22,000 for it. I thought it was owner-occupied, but the agent told me that there was a tenant, so I offered my highest price of \$20,500, or \$1500 less because it would take me a year to get the tenant out.

Q. As a matter of fact, before the limitations of the
721 Rent Control, was it your practice not only to get the houses vacated but also to renovate them before you put them on the market?

A. Always, it always paid.

Q. Then, did the fact that the houses were vacant on Adams Street have anything to do with the covenant, or did you have the houses vacated on Adams Street so that you might renovate them before offering them and putting them on the market?

A. In all those cases except as to the house that was sold to Deputy Marshal Neeley, in the Municipal Court, they were all renovated before being sold.

Q. And they were all vacated before they were renovated?

A. Definitely.

Q. So that the fact that the purchaser might move into a vacant house when he has bought, within one or two days after the settlement of the sale, has that anything to do with it, any significance?

A. Well, it has significance in that I could get a higher price for it because it is always accessible to being shown. I do not have to call the tenant. Some tenants won't show them. It makes a better appearance. That is the only significance that I attached to it.

Q. I mean, does that have any significance so far
722 as the covenant was concerned, or so far as trying to get negroes in there, in a hurry?

A. None at all. I remember distinctly when they were sold, I notified the tenant to move, and the next day she was out.

Q. Was there any attempt to put the negroes in there other than to sell the negroes the property; otherwise than in the regular course of business?

A. Not that I know of.

Q. Did the purchasers thereafter move in on their own responsibility and without any aid or assistance from you?

A. There was no aid or assistance from me. In some cases, I didn't even see them, most of them were sold through other offices.

Q. Now, did you sell any houses on Bryant Street, or Adams Street, right back of that block on Bryant Street, had gone, practically 100 percent colored?

A. No, sir, it had not gone 100 percent.

Q. I said practically; of the 56 houses in the 100 block of Adams Street, how many houses are still white occupied?

A. Two.

Q. Now, was that the proportion of white occupancies, that is, 2 out of 56,—was that proportion of the white in the 100 block of Adams Street when you sold the
723 first house on Bryant Street to a negro?

A. Yes.

Q. And the negro population then had moved up split right up against the 100 block of Bryant Street at the time you sold houses in the 100 block of Bryant Street to negroes?

A. That is correct.

Q. Mr. Urciolo, in the 100 block of Bryant Street, which contained approximately 31 houses of which 11 were occupied by negroes, uncovenanted, and approximately 5 or

6 occupied by Italian families,—did you consider that block a white block?

A. Definitely no.

Recross examination.

By Mr. Gilligan:

Q. It didn't make any difference whether you considered it a white block or not, did it?

A. Certainly it did.

Q. It hadn't elsewhere, had it?

A. (No response.)

Q. You testified that you didn't believe in covenants, have you not?

A. I testified I don't believe in racial covenants, I believe in covenants, though.

Q. Racial covenants?

A. Racial covenants, no.

724 Q. These two houses on Adams Street to which you have just testified as being still owned by white people, would you give them as much for your houses now as you would have given had you purchased them when the rest of the block was white?

A. I might give him more now.

Q. More now?

A. Yes, especially for the one on the north side. The one on the south side I have my doubts now, because it has a very serious crack in it. I am afraid for its foundation.

Q. How much would you give for the house on the north side?

A. For the house on the north side, I will give her \$10,000.

Q. And how much would you give for the house on the south side?

A. About four, maybe five.

Mr. Gilligan: That is all.

725 Further redirect examination.

By Mr. Houston:

Q. As to the houses you bought along the north side of Adams Street in that 100 block, what was the average price you paid for them?

A. \$4700.

Q. So that the \$10,000 which you would now pay the owner represents over \$5000 increase?

A. Yes.

Q. The houses on the south side of Adams Street, what did you buy those for?

A. Around \$4,000 to \$4,500 on the west side of Flagler Place; \$4500, or I might say \$3500 to \$5500 on the east side of Flagler Place.

Q. If that house on the south side of Adams Street still being occupied by a white person were in good condition, what would you pay for that, what would you give the white owner for that?

A. Today?

Q. Yes.

A. About \$6000.

Q. Now, are those the two families, the same two families that brought suit against the negroes for injunction and stated that the presence of negroes in the neighborhood would be absolutely ruinous of their peace of mind, and so forth, depreciative of their property?

726 A. They are, with the exception of Mr. Bishopp's mother, who around that time died.

Q. But on the north side, it was the Mussons?

A. It was.

Q. On the south side, the Bishopp's?

A. Yes.

Q. They were the plaintiffs in the suits against you and the negroes on Adams Street?

A. That is correct.

Q. And they have still remained there?

A. They are still there, both of them.

Q. So far as you know, have they had any trouble with their negro neighbors?

A. To the best of my knowledge, no.

727 Thereupon JAMES M. HURD was recalled as a witness by and on behalf of the Defendants, and, having been previously duly sworn, testified further as follows:

Further redirect examination.

By Mr. Houston:

Q. Yesterday there was testimony to the effect that you had marked an application for renewal of your license as colored.

A. Yes, sir.

Mr. Gilligan: Negro.

Mr. Houston: Sorry: negro.

By Mr. Houston:

Q. What were the circumstances?

A. Well, when I first got my license I didn't put anything on it, and since I have been mailing the cards in. I have never been to the Traffic Bureau for my license since the first time I got it way back in 1926; and by them sending the card, that is the only thing I seen on there, and I just marked it "C" on it; and another thing, which I forgot to tell you before, in my traveling around, that I have been marking—

728 Q. Are there any other occasions on which you have been classified as a negro?

A. Several occasions.

Q. All right, state them.

A. I had a job one time that a negro didn't hold, and by me having this job, why the colored and white would always become—

The Court: Wait a minute. He just wants to know the places.

The Witness: That was in Cleveland, Ohio, at the Browns Aviating Company.

By Mr. Houston:

Q. All right, any others?

A. Well, here in Roslyn, Virginia, at the welding company

over there—I can't call the name—yes, Thompson Welding Company.

729-731 Further recross examination.

By Mr. Gilligan:

Q. Did you sign the cards which were displayed yesterday and sent in for your renewal of license?

A. I have signed it for the last five years.

The Court: Answer the question.

By Mr. Gilligan:

Q. And you underscored the word "Negro" and put a little "x" in the box afterwards?

A. I don't know about it. I put "C" under there, that is all I put on the card.

The Court: He signed it.

Mr. Houston: That is our case.

The Court: Do you have anything else?

Mr. Gilligan: Nothing to offer at this time.

Mr. Urciolo: At this time, your Honor, I would like to make a motion that the complaints be dismissed because the plaintiffs have not shown any privity of estate as between them and the original grantees, particularly is this true as to the plaintiffs Hodges, who were the first grantees of a subsequent group of six houses:

It is my contention that they can bring a complaint against the defendants Hurd and the defendant Rowe, in as much as they were prior grantees, or successors to grantees, and therefore the benefit of this covenant inured to the plaintiffs Hodges.

However, the benefit of the covenants on the houses owned by the defendants Stewart and Savage since, according to the record, at least, they were not even built or sold to anyone. Certainly those, the plaintiffs Hodges, could not have relied on those covenants which were not even yet in

existence, for any benefit that might inure to them as plaintiffs.

The Court: The Court thinks it is appropriate to regard the issue raised by this motion as one which necessarily will inhere in the final determination of the case because, should the Court sustain the motion, it would be tantamount to saying that the plaintiff had failed to make a cause of action.

Mr. Urciolo: Not exactly, yet in a sense it would, but all it would do is to put upon plaintiffs the burden of proving privity of estate, and nothing else, which I maintain now they have not done.

The Court: I shall reserve present ruling upon this motion and will let it adhere, with the determination of the case.

Mr. Houston: Will your Honor let the record show that I join in the motion?

The Court: Very well.

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Findings of Facts and Conclusions of Law

By Order of Court the above cases were consolidated for trial. Civil Action 26,192 was brought by Frederic E. Hodge, Lena A. Murray Hodge, Pasquale de Rita, Victoria de Rita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola, Margaret Giancola, Francis M. Laffigan, John J. Luskey and Marie E. Luskey against James M. Hurd, Mary L. Hurd, Francis X. Ryan and Mary R. Ryan.

Civil Action No. 29,943 was brought by the same plaintiffs (omitting Francis M. Lanigan, deceased) and, in addition, Helen E. Pyles, Melville Gibbs Skinner and Helen Augusta Skinner against Raphael G. Urciolo, Florence E. Urciolo, Robert H. Rowe, Isabelle J. Rowe, Herbert E. Savage, Georgia N. Savage and Pauline B. Stewart.

From Civil Action No. 26,192 plaintiffs John J. Luskey, Marie E. Luskey and Francis M. Lanigan were withdrawn. From Civil Action 29,943 the same plaintiffs were withdrawn, as were Helen E. Pyles, Melville Gibbs Skinner and Helen Augusta Skinner, leaving as plaintiffs in both cases Frederic E. Hodge, Lena A. Murray Hodge, Pasquale de Rita, Victoria de Rita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola and Margaret Giancola.

Pursuant to Rule 52 (Federal Rules of Civil Procedure) the Court finds the facts and states its conclusions of law thereon as follows:

1. Plaintiffs are persons of the white race; defendants Hurd, Rowe, Savage and Stewart are persons of the negro race; defendants Ryan and Urciolo are persons of the white race. All of the parties are citizens of the United States, except Victoria de Rita, who has filed her petition for naturalization.
2. The plaintiffs Frederic E. Hodge and Lena A. Murray Hodge are the owners in fee simple and the occupants of Lot 143, Square 3125, improved by premises 136 Bryant Street, N. W.; plaintiffs Pasquale de Rita and Victoria de Rita are the owners in fee simple and the occupants of Lot 108, Square 3125, improved by premises 128 Bryant Street, N. W.; plaintiffs Constantino Marchegiani and Mary M. Marchegiani are the owners in fee simple of Lot 110, Square 125, improved by premises 124 Bryant Street, N. W., they having moved to a new home in Maryland prior to the trial, their Bryant Street house being now occupied by a tenant paying \$95 monthly rent; plaintiffs Balduino Giancola and Margaret Giancola are the owners in fee simple and the occupants of Lot 808, Square 3125, improved by premises 130 Bryant Street, N. W.
3. In or about the year 1906 the 20 lots immediately west of the alley west of First Street in Square 3125 were improved by dwellings known as 114 to 152 Bryant Street, N. W., all of them being sold subject to the following deed covenant:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars, which shall be a lien against said property."
- The 11 lots adjoining said twenty lots westerly to Second Street, N. W., built about the same time, were improved by dwellings known as 154 to 174 Bryant Street, N. W., none of said properties being subject to any restriction as to negro ownership or occupancy.
4. All lots in the 2300 block of First Street, N. W. in Square 3125, adjoining the 20 feed covenanted lots on

Bryant Street, are subject to the same covenant, as are also 9 lots in the middle of the north side of Adams Street, N. W., all other houses on Adams Street, N. W. in Square 3125 being subject to no restrictions as to negro ownership or occupancy.

With the exception of 4 houses in the 2100 block of First Street, N. W., (now occupied by negroes) all houses on First Street from T Street to the Soldiers Home and all houses to the east of First Street to and including Lincoln Road, from T Street north to the Soldiers Home are occupied by persons of the white race.

5. The territory west of First Street, N. W., from 829 Rhode Island Avenue north to Adams Street, has been almost solidly occupied by negroes for at least 15 years. There has been extensive negro penetration also to the north and west of Square 3125 (west of Second Street) extending into the Park View territory.

6. The 100 block of Bryant Street, N. W. consists of 31 dwellings, all on the south side of said street. The U. S. Government reservoir and filtration plant, McMillan Park and the District of Columbia Pumping Station front on the north side of said street, running from First Street to within about 100 feet of Fourth Street, N. W. On the south side of Bryant Street, west of Second Street for approximately 150 feet are located a District storage yard, and two District garages.

The 20 lots subject to the deed covenant aforesaid have continuously been occupied solely by white persons (except as to three houses occupied for brief periods by negroes, who moved on protest without legal action being necessary) until the sales to and occupancy by the negroes described in these actions. The 11 lots west from the covenanted properties to Second Street, not under covenant, have been continuously occupied by negroes for 20 years. For twenty years there has been no trend to or penetration by negroes, and can be none, except in the deed covenanted properties.

7. The defendants Hurd are the owners and occupants of Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W. Their immediate grantors were the defendants Ryan, who conveyed the property to the defendants Hurd by deed dated May 4th, 1944, recorded May 9th, 1944 as Instrument No. 12561, the Hurds having actual as well as constructive notice of the deed covenant.

The defendants Rowe are the owners and occupants of Lot 113, Square 3125, improved by premises 118 Bryant Street, N. W. Their immediate grantors were the defendants Urciolo, who conveyed the property to them by deed dated March 10, 1945, recorded March 21, 1945 as Instrument No. 9208, the Rowes having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon them.

The defendants Savage are the owners and occupants of Lot 144, Square 3125, improved by premises 134 Bryant Street, N. W. Their immediate grantor was the defendant

Florence E. Urciolo, who conveyed the property to them by deed dated March 13, 1945, recorded March 30, 1945 as Instrument No. 10582, the Savages having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon them.

The defendant Stewart is the owner and occupant of Lot 136, Square 3125, improved by premises 150 Bryant Street, N. W. Her immediate grantor was Florence E. Urciolo, who conveyed the property to her by deed dated March 9, 1945, recorded March 21, 1945 as Instrument No. 9210, said defendant Stewart having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon her.

The defendant Florence E. Urciolo is the record owner of Lots 109, 135 and 139, Square 3125 as a "straw" party, the actual owner being the defendant, Raphael G. Urciolo, who had actual notice as well as constructive notice of the deed covenants binding said properties by letter dated June 17, 1944 from Henry Gilligan, attorney for plaintiffs in this case. Defendant Raphael G. Urciolo stated at the trial these properties were for sale to Negroes.

Defendants Urciolo filed Civil Action No. 27958 on March 6, 1945, seeking an "injunction and to quiet title" as the owners of the six properties described herein, naming as defendants all other owners of the 20 deed covenanted lots in the 100 Block of Bryant Street, N. W., said action seeking an injunction restraining defendants "from attempting to obtain either equitable or legal relief by way of enforcement of said covenant" and declaring the covenant "null and void as a cloud on the respective titles of plaintiffs" (Urciolos). After selling three of said

properties to the defendants Rowe, Savage and Stewart, negroes, Civil Action No. 27958 was dismissed by their attorney, Charles H. Houston.

8. There has been no constant or substantial penetration of negroes into the area described in paragraphs 3 and 4 hereof sufficient to show that the purpose of the covenant herein has been frustrated or that the result of enforcing it would depreciate rather than enhance the value of the property involved, nor has it been shown that such area has so changed in its character and environment and its uses that the purpose of the covenant cannot be carried out or that its enforcement would substantially lessen the value of the property.

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Conclusions of Law

1. The covenant involved in these actions is valid under decisions of the United States Court of Appeals for the District of Columbia and the Supreme Court of the United States.

2. There has been no trend or penetration of negroes in the area involved herein to bring these actions within the exception to the rule upholding such covenants, as set forth in *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48.

3. These cases involved the same area of the District of Columbia as that involved in *Mays v. Burgess*, 79 U. S. App. D. C. 343, decided January 29, 1945, and come within the purview of that decision enforcing the restrictive covenant.

4. The defense claim of laches in not asserting the alleged covenant against the properties immediately in the rear of plaintiffs in the 100 block of Adams Street; and in inexcusable delay in attempting to enforce the covenant is not well taken. There has been no laches or undue delay.

5. The deeds from defendants Ryan to defendants Hurd and from defendants Urciolo to defendants Rowe, Savage and Stewart are null and void, and judgment should be entered accordingly.

6. Defendants should be appropriately enjoined, and judgment should be entered accordingly.

Judgment

These causes, consolidated, came on to be heard at this term, and thereupon, upon consideration thereof and pursuant to the Findings of Fact and Conclusions of law filed herein, and for the reasons set forth therein, it is, by the Court, this 10th day of December, 1945,

Ordered and Adjudged that the deed dated May 4, 1944, and recorded May 9, 1944, as Instrument No. 12561 among the Land Records of the District of Columbia, from Francis X. Ryan and Mary R. Ryan, his wife, to James M. Hurd and Mary I. Hurd, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W., is hereby declared to be in Francis X. Ryan and Mary R. Ryan, his wife.

It Is Further Ordered and Adjudged that the deed dated March 10, 1945, and recorded March 21, 1945 as Instrument No. 9208 among the Land Records of the District of Columbia, from Raphael G. Urciolo and Florence E. Urciolo, his wife, to Robert H. Rowe and Isabelle J. Rowe, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 113, Square 3125, improved by premises 118 Bryant Street, N. W., is hereby declared to be in Raphael G. Urciolo.

It is Further Ordered and Adjudged that the deed dated March 13, 1945 and recorded March 30, 1945 as Instrument No. 10582 among the Land Records of the District of Columbia, from Florence E. Urciolo to Herbert E. Savage and Georgia N. Savage, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 144, Square 3125, improved by premises 134 Bryant Street, N. W., is hereby declared to be in Florence E. Urciolo.

833 It Is Further Ordered and Adjudged that the deed dated March 9, 1945, and recorded March 21, 1945, as Instrument No. 9210 among the Land Records of the District of Columbia, from Florence E. Urciolo to Pauline B. Stewart be, and the same hereby is, declared null and void and of no effect, and the title to Lot 136, Square 3125, improved by premises 150 Bryant Street, N. W., is hereby declared to be in Florence E. Urciolo.

It Is Further Ordered and Adjudged that defendants Francis X. Ryan and Mary R. Ryan, his wife, as to Lot

114, Square 3125, Raphael G. Urciolo as to Lot 113, Square 3125, and Florence E. Urciolo, as to Lots 144, 136, 109, 135 and 139 Square 3125, and all persons in active concert or participation with them, and each of them, be and they hereby are, permanently enjoined from renting, leasing, selling, transferring or conveying any of said lots unto any Negro or colored person.

It Is Further Ordered and Adjudged that defendants James M. Hurd and Mary I. Hurd, his wife, as to Lot 114, Square 3125, Robert H. Rowe and Isabelle J. Rowe, his wife, as to Lot 113, Square 3125, Herbert E. Savage and Georgia N. Savage, his wife, as to Lot 144, Square 3125, and Pauline B. Stewart, as to Lot 136, Square 3125, and any and all negroes or colored persons in active concert or participation with them, or any of them, be, and they hereby are, permanently enjoined from renting, leasing, selling, transferring or conveying any and all of said lots.

It Is Further Ordered and Adjudged that defendants James M. Hurd and Mary I. Hurd, his wife, Robert H. Rowe and Isabelle J. Rowe, his wife, Herbert E. Savage and Georgia N. Savage, his wife, and Pauline B. Stewart, and all persons in active concert or participation with them, be, and they hereby are, ordered to remove themselves and all of their personal belongings, from the land and premises now occupied by them within 60 days from November 20, 1945.

It Is Further Ordered and Adjudged that taxable costs be assessed against the defendants and each of them.

834

Notice of Appeal

Notice is hereby given this 10th day of January, 1946 that James M. Hurd and Mary I. Hurd hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 10th day of December, 1945, in favor of Frederic E. Hodge and Lena A. Murray Hodge, Pasquale DeRita, Victoria DeRita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola and Margaret Giancola against the aforesaid defendants.

835 *Order Extending Time to File Record*

Upon consideration of defendants' motion to extend time for completing and filing of the record of this cause on appeal to the United States Court of Appeals, and counsel for plaintiffs consenting to the extension, it is by the Court this 19th day of February, 1946,

Ordered, That the time for filing the record in the appellate court be extended to March 15, 1946.

836 *Order for Inclusion of Transcript of Evidence*

Upon consideration of motion of defendants to file one copy of the transcript of evidence and transmit the same with the record on appeal, and thereupon, it is this 4th day of March, 1946, by the Court

Ordered: That leave is hereby granted to file one copy of the Transcript of Evidence herein, and the Court is directed to include the same in the record on appeal and transmit the original Transcript of Evidence with the record on appeal.

837 *Designation of Record*

The Clerk will please prepare the record on appeal in this case and include the following:

1. The Complaint.
2. Motion for preliminary injunction.
3. Answer of defendants 1, and 2.
4. Order denying motion for preliminary injunction and advancing cause.
5. Motion by defendant 1, for change of trial justice and affidavit as to personal prejudice and bias.
7. Transcript of testimony.
8. Findings of fact and conclusions of law.
9. Judgment.

11. This stipulation.

838 District Court of the United States for the District of
Columbia

UNITED STATES OF AMERICA, ss:
District of Columbia:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 12, both inclusive, and 827 to 837, both inclusive, to be a true and correct transcript of the record according to designation of record by counsel filed and made a part of this transcript, and in accordance with Rule 75.(g) of the Federal Rules of Civil Procedure for the District Courts of the United States, in action entitled Frederic E. Hodge, et al., Plaintiffs vs. James M. Hurd, et al., Defendants, Civil Action No. 26192, as the same remains upon the files and of record in said Court, except the following:

The certified record of official court reporter of proceedings, pages numbered 13 to 826, both inclusive, is included herein pursuant to order of this Court filed March 4, 1946.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 12th day of March, 1946.

[SEAL.]

Clerk.

(4481)

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1946

*United States Court of Appeals
for the District of Columbia***No. 9197** FILED MAY 27 1946*Joyce W. Stewart*

CLERK

RAPHAEL G. URCIOLO, ET AL., *Appellants*,

VS.

FREDERIC E. HODGE, ET AL., *Appellees*Appeal from the District Court of the United States for
the District of Columbia

FILED MARCH 13, 1946.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1946

No. 9197

RAPHAEL G. URCIOLO, IN PROPER PERSON, ROBERT H. ROWE, ISABELLE J. ROWE, HERBERT B. SAVAGE, GEORGIA N. SAVAGE, PAULINE B. STEWART, Appellants,
 vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE DE RITA, VICTORIA DE RITA, CONSTANTINO MARCHEGIANI, MARY M. MARCHEGIANI, BALDUINO GIANCOLA, MARGARET GIANCOLA, Appellees

Appeal from the District Court of the United States for the District of Columbia

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 2, 1946.

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District Court of the United States for the District of Columbia

Civil Action No. 29943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCIOLO, et al., Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled action, to wit:

1 Filed Jul. 28, 1945

In the District Court of the United States for the District of Columbia

Civil Action No. 29943

FREDERIC E. HODGE, LENA A. MURRAY HODGE, 136 Bryant St., N. W.; Pasquale De Rita, Victoria De Rita, 128 Bryant St., N. W.; John J. Luskey, Marie E. Luskey, 148 Bryant Street, N. W.; Costantino Marchegiani, Mary M. Marchegiani, 124 Bryant St., N.; Helen E. Pyles, 1739 Q St., N. W.; Balduino Giancola, Margaret Giancola, 130 Bryant St., N. W.; Melville Gibbs Skinner, Helen Augusta Skinner, 1832 Kilbourne Pl., N. W., Plaintiffs,

vs.

RAPHAEL G. URCIOLO, 907 New York Ave., N. W.; FLORENCE E. URCIOLO, 1630 Webster St., N. W.; Robert H. Rowe, Isabelle J. Rowe, 50 Florida Avenue, N. W.; Herbert B. Savage, Georgia N. Savage, 3507 New Hampshire Ave., N. W.; Pauline B. Stewart, 2015 13th St., N. W., Defendants

Complaint for Injunction

The plaintiffs respectfully represent to this Honorable Court as follows:

1. That plaintiffs are citizens of the United States, residents of the District of Columbia, and are of the White race.

2. That defendants are citizens of the United States and residents of the District of Columbia; defendants Raphael G. Urciolo and Florence E. Urciolo being of the White race, and all other defendants being Negroes or colored persons.

3. That defendants Rowe are the present record owners of Lot 113 in Square 3125, improved by premises 118 Bryant Street, N. W., defendants Savage are the present record owners of Lot 144 in Square 3125, improved by premises 134 Bryant Street, N. W.; that defendant Pauline B. Stewart is the present record owner of Lot 136 in Square 3125, improved by premises No. 150 Bryant Street, N. W.

4. That plaintiffs are all owners of their respective properties, as follows:

Frederic E. & Lena A. Murray Lodge, Lot 143, Square 3125, being 136 Bryant St.

Pasquale & Victoria De Rita, Lot 108, Square 3125, being 128 Bryant St.

John J. & Marie E. Luskey, Lot 137, Square 3125, being 148 Bryant St.

Constantino & Mary M. Marchegiani, Lot 110, Square 3125, being 124 Bryant St.

Helen E. Pyles, Lot 141, Square 3125; being 140 Bryant St.

Balduino & Margaret Giancola, Lot 808, Square 3125, being 130 Bryant St.

Melville Gibbs & Helen Augusta Skinner, Lot 145, Square 3125, being 132 Bryant St.

5. That all of the real estate described herein as being owned by the plaintiffs and defendants is located on the south side of Bryant Street, Northwest, between First and Second Streets, in the District of Columbia (there being no development on the north side of said street other than the United States Reservoir Grounds); that all of the properties herein described, as well as all other properties on the west side of First Street, N. W., between Adams and Bryant Streets, and all properties on Bryant Street from First Street through 152 Bryant Street, were erected and sold through Middaugh & Shannon, Incorporated, said

group of houses being known as "Middaugh & Shannon, Inc. subdivision of lots in Block 25, Addition to LeDroit Park, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber County 20 at folio 1; that Middaugh & Shannon, Inc. sold all of said lots or properties by and through the usual form of deed in which the following covenant, running with the land, has appeared in the deeds to all of the properties in said subdivision, including the properties now owned, but not occupied, by the Negro defendants, all of which said deeds were duly recorded among the Land Records of the District of Columbia:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed 3 unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2000), which shall be a lien against said property."

6. That by deed dated March 10, 1945, recorded March 21, 1945 as Instrument No. 9208 in Liber 8083, folio 238, defendants Raphael G. Urciolo and Florence E. Urciolo, his wife, conveyed Lot 113, Square 3125 to the Negro defendants, Robert H. Rowe and Isabell J. Rowe. On March 12, 1945 said defendants Rowe gave a Notice to Quit to H. P. Harding, white tenant of said property, stating they desired the premises for their own personal and immediate use and occupancy as a dwelling.

That by deed dated March 13, 1945, recorded March 30, 1945 as Instrument No. 10582 in Liber 8087, folio 483, defendant Florence E. Urciolo conveyed Lot 144, square 3125 to the Negro defendants, Herbert B. Savage and Georgia N. Savage, his wife. On March 15, 1945 said defendants Savage gave a Notice to Quit to Mrs. Anna Pettit, white tenant of said property, stating they desired the premises for their own personal and immediate use and occupancy as a dwelling.

That by deed dated March 9, 1945 and recorded March 21, 1945 as Instrument No. 9210 in Liber 8083, folio 241, defendant Florence E. Urciolo conveyed Lot 136, Square 3125 to the Negro defendant, Pauline B. Stewart. On March 12, 1945 said defendant Stewart gave a Notice to Quit to the white tenant John Anselmo, stating she desired

the premises for her own personal use and occupancy as a dwelling.

That the said Florence E. Urciolo is the record owner of Lots 109, 135 and 139, Square 3125 (the actual owner being the said Raphael G. Urciolo, her husband). The said Raphael G. Urciolo and Florence E. Urciolo on March 6, 1945 filed Civil Action No. 27958 for "Injunction and to Quiet Title", naming as defendants the owners of all of said Middaugh-Shannon, Inc. properties in the 100 Block Bryant Street N. W. except those owned by himself and his wife, Florence E. Urciolo, said action seeking an injunction restraining defendants "from attempting to obtain either equitable or legal relief by way of enforcement of said covenant"; declaring the covenant "null and void as a cloud on the respective titles of plaintiffs." Thereafter, and following the sale of the properties the subject of this suit to Negroes, said Raphael G. Urciolo and Florence E. Urciolo, through their attorney, Charles H. Houston, dismissed said Civil Action 27958.

4 7. That all of the properties in said 100 block of Bryant Street, N. W. from First Street through No. 152 Bryant Street, are occupied by persons of the White race, except the property 116 Bryant Street (Lot 114, Square 3125), now owned and occupied by James M. Hurd and Mary I. Hurd, his wife, Negroes, against whom Civil Action No. 26192 is pending in this Court. All of said properties are owned by persons of the White race except those the subject of this action and 116 Bryant Street, N. W.; said Raphael G. Urciolo, actual owner of 126, 144 and 152 Bryant Street, N. W., is making efforts to sell these properties to Negroes.

8. Plaintiffs aver that all of said defendants are charged with notice by law and had actual notice or knowledge of said covenant of record herein set forth; that they knowingly and wilfully consummated the transactions, the said Negro defendants becoming the owners of the several properties in contravention of said covenant of record, which has never been abrogated or nullified and now is in full force and effect.

9. Plaintiffs purchased their several properties under the belief that said covenant was binding upon them as well as upon owners of all property in the portion of Square 3125 developed by Middaugh & Shannon, Inc.

10. Plaintiffs aver that the above mentioned and described deeds of Lots 113, 144 and 136, Square 3125, to the respective Negro defendants are a nullity and of no effect, and said deeds and conveyances confer no property rights upon said defendants; that the contemplated occupancy of said property by the Negro defendants, as well as to permit the deeds and conveyances to remain a matter of record, will be injurious, depreciative and absolutely ruinous of the real estate owned by plaintiffs, and will be harmful, detrimental and subversive of the peace of mind, comfort and property rights and interests of plaintiffs and of other property owners, and said neighborhood will become depreciative in value and undesirable as a neighborhood wherein White people may live. The injury to plaintiffs is irreparable and is incapable of ascertainment and compensation in damages, and the only adequate remedy is by way of injunction.

Wherefore plaintiffs demand:

1. That the defendants, Rowe, Savage and Stewart, be enjoined, during the pendency of this suit, and permanently 5 thereafter, from renting, leasing, selling, transferring or conveying premises 118, 134 and 150 Bryant Street, N. W., respectively, to Negroes or colored persons, and from permitting said properties to be occupied by Negroes or colored persons.

2. That the defendants Rowe, Savage and Stewart be enjoined, pending this suit, and permanently thereafter, from occupying said premises 118, 134 and 150 Bryant Street, N. W., respectively.

3. That the deeds to said defendants Rowe, Savage and Stewart, as described in Paragraph 6 of this Complaint, be cancelled, and a judgment be entered herein declaring said conveyances void and of no effect, and further declaring title to Lot 113, Square 3125, to be in Raphael G. Urciolo, and title to Lots 144 and 136, Square 3125, to be in Florence E. Urciolo, subject to the restrictions and penalty of the covenant of record herein set forth.

4. That plaintiffs have judgment for costs and for the penalty of \$2,000 against each and all of said defendants as to each property owned by such defendants, said penalties to be liens against the respective properties.

5. That they be allowed such other and further relief as shall be proper.

FREDERIC E. HODGE.
 LENA A. MURRAY HODGE.
 PASQUALE DE RITA.
 VICTORIA DE RITA.
 JOHN J. LUSKEY.
 MARIE E. LUSKEY.
 CONSTANTINO MARCHEGIANI.
 MARY M. MARCHEGIANI.
 HELEN E. PYLES.
 BALDUINO GIANCOLA.
 MARGARET GIANCOLA.
 MELVILLE GIBBS SKINNER.
 HELEN AUGUSTA SKINNER.

DISTRICT OF COLUMBIA, ss:

Lena A. Murry Hodge on oath deposes and says that she is one of the plaintiffs in this cause and she has read the foregoing Complaint by her subscribed; that the statements therein made are true to the best of her knowledge, information and belief.

LENA A. MURRAY HODGE.

Subscribed and sworn to before me this 13th day of July, 1945.

A. B. KEEFER,
 Notary Public, D. C.

RALPH FICHTER,
 Atty. for Plaintiffs.

HENRY GILLIGAN,
 Atty. for Plaintiffs—900 F. St., N. W.

6 Filed Jul. 28, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District of Columbia

Civil Action No. 29943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL A. URCIOLO, et al., Defendants

Motion for Preliminary Injunction

Come now the plaintiffs through their attorney and move this Honorable Court to issue out of this Court a preliminary

injunction commanding and compelling the defendants, and each of them, to conform to, abide by and comply with the deed covenant running with the land and premises known as 118, 126, 134, 144, 150 and 152 Bryant Street, Northwest (being Lots 113, 109, 144, 139, 136 and 135, Square 3125) in the District of Columbia; and further enjoining Raphael G. Urciolo and Florence E. Urciolo, and each of them, from renting, leasing, selling, transferring or conveying any of said properties to any of the defendants Rowe, Savage and Stewart, who are Negroes, or to any other Negroes or colored persons; and further, that said defendants Rowe, Savage and Stewart, and any other Negroes or colored persons, be enjoined from purchasing, renting, leasing, transferring, conveying or occupying any of the properties above described, and requiring any of said defendants, or other Negroes or colored persons who may occupy said premises or properties to vacate same and to remove therefrom all of his, her or their personal effects.

And for reasons therefor plaintiffs refer to the verified complaint filed in this cause, and to such other matters as may properly be brought to the attention of the Court.

**RALPH FICHTER,
HENRY GILLIGAN,**

*Attys. for Plaintiffs,
1021 Washington Loan & Trust Bldg.*

To Raphael G. Urciolo, Florence E. Urciolo, Robert H. Rowe, Isabelle J. Rowe, Herbert B. Savage, Georgia N. Savage, Pauline B. Stewart:

The points to be submitted in support of this Motion and the authorities intended to be used are attached hereto. The rules of this Court require that, if you oppose the granting of the Motion, you, or your counsel, shall within five days from the date of the service of a copy of the Motion upon you or such further time as said Court may grant or as the parties hereto may agree upon, file in reply a statement of the points and authorities upon which you rely, and serve a copy thereof upon counsel for the plaintiffs.

**HENRY GILLIGAN,
RALPH FICHTER,**

*Attys. for Plaintiffs,
1021 Washington Loan & Trust Bldg.*

7. Filed Sep. 5, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District
of Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCILO, 907 New York Avenue, N. W.;
Florence E. Urciolo, 1630 Webster Street, N. W.; Robert
H. Rowe, Isabelle J. Rowe, 50 Florida Avenue, North-
west; Herbert B. Savage, Georgia N. Savage, 3607 New
Hampshire Avenue, N. W.; Pauline B. Stewart, 2015 13th
Street, Northwest, Defendants

*Answer to Complaint and Motion for Preliminary
Injunction*

Defendants expressly denying all allegations of the com-
plaint not specifically admitted, show:

1. They have no proof and no facts on which to base a belief whether plaintiffs are citizens of the United States or residents of the District of Columbia; neither admit nor deny the same but call for strict proof. They specifically deny that plaintiffs, or any of them, are of the white race.
2. They admit their citizenship and residence, but deny that they are Negroes. As to the allegations that they are colored persons they admit they are colored persons in the same sense that plaintiffs are colored persons, but no other.
3. They admit the allegations of paragraph 3.
4. They have no proof and no facts on which to base a belief whether plaintiffs are the owners of the properties alleged, neither affirm nor deny said allegations but call for strict proof.
5. They deny the allegations of paragraph 5.
6. They admit the allegations of paragraph 6, except they deny that the tenants named in said paragraph were white.
7. They deny the allegations of paragraph 7.
8. They admit knowledge of the alleged covenant referred to in paragraph 8 but deny its legal effect. Upon advice of counsel they make no answer to the conclusions of law set forth in paragraph 8.

9. They deny the allegations of paragraph 9.

10. They deny the allegations of paragraph 10.

11. Further answering these defendants say that for over fifteen years and nearly twenty years the 100 block of Bryant Street, Northwest has been a neighborhood where all of the persons are colored or pigmented persons, and approximately half by number are supposed to be persons of the Negro race; that approximately one-third of the residences in said block for more than fifteen years have been owned and occupied openly and notoriously by persons supposed to be of the Negro race; that for approximately a year premises 116 Bryant Street, Northwest, has been occupied by a family named Hurd, whom plaintiff have on other occasions alleged to be of the Negro race; and assuming plaintiffs to be of the "white race", issuance of an injunction would not restore or create said 100 block of Bryant Street, Northwest, a "white" neighborhood.

12. Further answering these defendants say that persons going in and out of the residences of certain plaintiffs herein, and persons in other houses in said 100 block within the alleged covenanted area not made parties to this suit, appear to have more characteristics of Negroes or persons of the Negro race, whatever be the definition, than many of the defendants herein, and from appearances are distinctly colored persons.

13. Further answering these defendants say that the 100 block of Bryant Street, Northwest, and all properties west of First Street, Northwest, for more than fifteen years have constituted a distinctly colored neighborhood, according to plaintiffs' definition, and that plaintiffs Marchegiana, Giancola and DeRita purchased their said properties well knowing same to be a fact.

14. Further answering these defendants say that all the plaintiffs have lost the right to claim enforcement of the alleged covenant for that immediately in rear of their residences, on the north side of the 100 block of Adams Street, Northwest, were a group of houses, title to which was burdened of record with the same alleged covenant; nevertheless for five years they have stood by and permitted every one of said houses to be purchased and occupied by persons allegedly of the Negro race without protest; they did not join in suit to enforce said alleged covenant, and when certain plaintiffs on Adams Street abandoned the suits to enforce said alleged covenant no one of the present

plaintiffs or any one else in the 100 block of Bryant Street, Northwest, attempted to intervene, but let the case be abandoned and die.

15. Further answering these defendants say that the presence of new home owners in said block has appreciated the value of the property; that the properties of plaintiffs is run down and depreciated, and that the only properties in the block which have been improved, painted on the outside and otherwise beautified are properties owned and occupied by persons allegedly of the Negro race.

Defenses

1. The alleged covenant is void as being an illegal restraint on alienation; in violation of public policy.

2. The alleged covenant is unenforceable by injunction because of change of neighborhood, which makes the purported objects of the covenant unenforceable.

3. Plaintiffs have lost their claim to enforcement by laches in not asserting the alleged covenant against the properties immediately in the rear of them on the 100 block of Adams Street, and in inexcusable delay in attempting to enforce *Hodge v. Hurd*, Civil Action No. 26-192, this court, the record of which is prayed to be read as a part of this answer.

4. Defendants purchased their properties in good faith relying on the undisturbed and long continued possession of the Hurd family in premises 116 Bryant Street, Northwest.

HOUSTON, HOUSTON & HASTIE,
By **CHARLES H. HOUSTON,**

Attorneys for Defendant,
615 F Street, Northwest.

10 Filed Sep. 11, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District
of Columbia

Civil No. 29-943

C. A. 26 192

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. UBICHOLO, et al., Defendants

*Order Denying Injunction, Advancing and Consolidating
Causes*

This cause came on to be heard upon plaintiffs' motion for preliminary injunction and affidavit supporting same and respondents' answer, and further upon plaintiffs' oral motion made in open court to advance this cause for hearing and to consolidate same with the cause styled Hodge v. Hurd, Civil Action No. 26-192, and after argument of counsel and plaintiffs' withdrawing their said motion for preliminary injunction, it is this 11th day of September, 1945, Ordered:

1. That the motion for preliminary injunction be denied.
2. That this cause be consolidated with Hodge v. Hurd, Civil No. 26-192, for hearing and that both causes be assigned for hearing on the merits on October 9, 1945 or as soon thereafter as they can be heard.

By the Court: T. ALAN GOLDSBOROUGH,

Justice.

Seen:

CHARLES H. HOUSTON,
Attorney for Respondents.

Presented by Henry Gilligan,

11 Filed Oct. 9, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District
of Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs

vs.

RAPHAEL G. URCILO, et al., Defendants

*Motion for Leave to Withdraw Appearance as Attorney
for Defendant Raphael G. Urciolo*

Charles H. Houston, counsel of record for the defendants
herein, moves the Court for leave to withdraw his appear-
ance as attorney for defendant Raphael G. Urciolo, because
said defendant is going to represent his own interests in
propria persona.

CHARLES H. HOUSTON,
615 F Street Northwest,
Attorney for Defendant Named.

To Mr. Raphael G. Urciolo, 907 New York Avenue, North-
west and Henry Gilligan, Esquire, Attorney for plain-
tiffs, Washington Loan & Trust Bldg., Washington,
D. C.:

Please take notice of the filing of the above motion, which
will be presented to the Motions Court, Monday, October 8,
1945, at 10 o'clock or as soon thereafter as counsel can be
heard.

CHARLES H. HOUSTON.

Certificate of Service

I certify that I have forwarded copy of the above Motion
by mail, postage prepaid, to Raphael G. Urciolo at the ad-
dress noted above, and have delivered copy to Henry Gilli-
gan, Esquire, at his office above noted.

CHARLES H. HOUSTON.

12 Filed Oct. 9, 1945. Charles E. Stewart, Clerk
In the District Court of the United States for the District
of Columbia

Civil No. 29-943

FREDERIC E. HODGE et al., Plaintiffs,

vs.

RAFAEL G. URCILO et al., Defendants

*Order Granting Leave to Withdraw Appearance of Charles
H. Houston as Attorney for Defendant Raphael G. Ur-
ciolo*

Upon motion of Charles H. Houston for leave to withdraw
his appearance as attorney for the defendant Raphael G.
Urciolo, and there being no objections from counsel for
plaintiffs, it is by the Court this 9th day of October, 1945,

ORDERED,

That the appearance of Charles H. Houston as Attorney
for the defendant Raphael G. Urciolo be now withdrawn.

F. DICKINSON LETTS,

Seen:

Justice.

HENRY GILLIGAN,
Counsel for Plaintiffs.

13 Filed Oct. 15, 1945. Charles E. Stewart, Clerk
In the District Court of the United States for the District
of Columbia

Civil Action No. 29-943

FREDERIC E. HODGE et al., Plaintiffs,

vs.

RAFAEL G. URCILO et al., Defendants

*Motion for Change of Trial Justice, and Affidavit as to
Personal Bias or Prejudice*

DISTRICT OF COLUMBIA, ss:

Pauline B. Stewart, a party defendant in the above cause,
being first duly sworn on oath states that she charges the
Honorable F. Dickinson Letts, the Justice presiding at the

trial of this cause, with personal prejudice and bias against her; that this cause was brought against her and four other Negroes, and others not material here, to cancel the deeds and evict her and the other Negroes from certain property on Bryant Street, Northwest in the District of Columbia (affiant's property being premises 150 Bryant Street, Northwest, Lot 136, Square 3125) on the ground they are Negroes and have taken title and possession in breach of the following covenant which burdens the title to said property, according to the allegations of the complaint:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2,000), which shall be a lien against said property."

That on Saturday October 13, 1945; affiant's counsel discovered that the presiding Justice lives in and has an interest in premises 3500 Garfield Street, Northwest (Lot 32, Square 1942 in said District), title to which is burdened by the following covenant, Liber 4660, f. 148 Recorder of Deeds:

"Subject to the covenants to run with the land perpetually, . . . that said land and premises will not be sold, rented or conveyed, the whole nor any part thereof, or any structure thereon, to any person of African descent. . . ."

That in said trial the presiding Justice has been personally biased and prejudiced against affiant and the other Negroes and in favor of plaintiffs who are alleged to be white persons because of his interest in the issues involved in this case.

14 That the instant cause came on for hearing on October 9, 1945 at 1:30 p. m.; that it was not known for certainty until that morning before whom the case would be tried; that no information was available to put affiant on inquiry and she had no reason to believe that the Justice lived in property subject to such a covenant until her counsel was given such information by telephone about 4:30 p. m. Friday, October 12, 1945; that investigation was made and the facts ascertained about 1:30 p. m. Saturday, October 13, 1945 after the Clerk's office had closed; and affiant has

made and filed this affidavit of prejudice and bias at the first possible moment after the facts were discovered.

Wherefore affiant respectfully requests that the presiding Justice proceed no further herein but that another Justice shall be designated in the manner prescribed in section 24 of Title 28, United States Code, or chosen in the manner prescribed in section 27 of said Title, or certified in the manner prescribed in Section 314, Title 11, D. C. Code, 1940 (Mar. 3, 1901, ch. 854, sec. 67) to hear and decide this cause.

PAULINE B. STEWART.

Subscribed and sworn to before me this — day of October, 1945.

Mary G. —,
Notary Public for D. C.

Certificate of Counsel

I, Charles H. Houston, counsel of record for affiant-defendant Pauline B. Stewart, do hereby certify that the foregoing application and affidavit are made and presented in good faith.

CHARLES H. HOUSTON,
615 F Street, Northwest,
Attorney for Defendant.

Service accepted:

HENRY GILLIGAN,
Attorney for Plaintiffs.

15 Frederic E. Hodge, et al. vs. Raphael G. Urciolo, et al. Civil Action No. 29943.

NOTE: The certified record of official court reporter of proceedings is to be found in the accompanying record, Frederic E. Hodge, et al. vs. James M. Hurd, et al., Civil Action No. 26192.

16 Filed Dec. 10, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District
of Columbia

Civil Action No. 26,192

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

JAMES M. HURD, et al., Defendants

Civil Action No. 29,943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCILO, et al., Defendants

Findings of Facts and Conclusions of Law

By Order of Court the above cases were consolidated for trial. Civil Action 26,192 was brought by Frederic E. Hodge, Lena A. Murray Hodge, Pasquale de Rita, Victoria de Rita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola, Margaret Giancola, Francis M. Lanigan, John J. Luskey and Marie E. Luskey against James M. Hurd, Mary I. Hurd, Francis X. Ryan and Mary R. Ryan.

Civil Action No. 29,943 was brought by the same plaintiffs (omitting Francis M. Lanigan, deceased) and, in addition, Helen E. Pyles, Melville Gibbs Skinner and Helen Augusta Skinner against Raphael G. Urciolo, Florence E. Urciolo, Robert H. Rowe, Isabelle J. Rowe, Herbert E. Savage, Georgia N. Savage and Pauline B. Stewart.

From Civil Action No. 26,192 plaintiffs John J. Luskey, Marie E. Luskey and Francis M. Lanigan were withdrawn. From Civil Action 29,943 the same plaintiffs were withdrawn, as were Helen E. Pyles, Melville Gibbs Skinner and Helen Augusta Skinner, leaving as plaintiffs in both cases Frederic E. Hodge, Lena A. Murray Hodge, Pasquale de Rita, Victoria de Rita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola and Margaret Giancola.

Pursuant to Rule 52 (Federal Rules of Civil Procedure) the Court finds the facts and states its conclusions of law thereon as follows:

1. Plaintiffs are persons of the white race; defendants Hurd, Rowe, Savage and Stewart are persons of the negro

race; defendants Ryan and Urciolo are persons of the white race. All of the parties are citizens of the United States, except Victoria de Rita, who has filed her petition for naturalization.

2. The plaintiffs Frederic E. Hodge and Lena A. Murray Hodge are the owners in fee simple and the occupants of Lot 143, Square 3125, improved by premises 136 Bryant Street, N. W.; plaintiffs Pasquale de Rita and Victoria de Rita are the owners in fee simple and the occupants of Lot 108, Square 3125, improved by premises 128 Bryant Street, N. W.; plaintiffs Constantino Marchegiani and Mary M. Marchegiani are the owners in fee simple of Lot 110, Square 3125, improved by premises 124 Bryant Street, N. W., they having moved to a new home in Maryland prior to the trial, their Bryant Street house being now occupied by a tenant paying \$95 monthly rent; plaintiffs Balduino Giancola and Margaret Giancola are the owners in fee simple and the occupants of Lot 808, Square 3125, improved by premises 130 Bryant Street, N. W.

3. In or about the year 1906 the 20 lots immediately west of the alley west of First Street in Square 3125 were improved by dwellings known as 114 to 152 Bryant Street, N. W., all of them being sold subject to the following deed covenant:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars, which shall be a lien against said property."

The 11 lots adjoining said twenty lots westerly to Second Street, N. W., built about the same time, were improved by dwellings known as 154 to 174 Bryant Street, N. W., none of said properties being subject to any restriction as to negro ownership or occupancy.

4. All lots in the 2300 block of First Street, N. W. in Square 3125, adjoining the 20 fee covenanted lots on Bryant Street, are subject to the same covenant, as are also 9 lots in the middle of the north side of Adams Street, N. W., all other houses on Adams Street, N. W. in Square 3125 being subject to no restrictions as to negro ownership or occupancy.

With the exception of 4 houses in the 2100 block of First Street, N. W., (now occupied by negroes) all houses on

First Street from T Street to the Soldiers Home and all houses to the east of First Street to and including Lincoln Road, from T Street north to the Soldiers Home are occupied by persons of the white race.

5. The territory west of First Street, N. W. from Rhode Island Avenue north to Adams Street, has been almost solidly occupied by negroes for at least 15 years. There has been extensive negro penetration also to the north and west of Square 3125 (west of Second Street) extending into the Park View territory.

6. The 100 block of Bryant Street, N. W. consists of 31 dwellings, all on the south side of said street. The U. S. Government reservoir and filtration plant, McMillan Park and the District of Columbia Pumping Station front on the north side of said street, running from First Street to within about 100 feet of Fourth Street, N. W. On the south side of Bryant Street, west of Second Street for approximately 150 feet are located a District storage yard, and two District garages.

The 20 lots subject to the deed covenant aforesaid have continuously been occupied solely by white persons (except as to three houses occupied for brief periods by negroes, who moved on protest without legal action being necessary) until the sales to and occupancy by the negroes described in these actions. The 11 lots west from the covenanted properties to Second Street, not under covenant, have been continuously occupied by negroes for 20 years. For twenty years there has been no trend to or penetration by negroes, and can be none, except in the deed covenanted properties.

7. The defendants Hurd are the owners and occupants of Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W. Their immediate grantors were the defendants Ryan, who conveyed the property to the defendants Hurd by deed dated May 4th, 1944, recorded May 9th, 1944 as Instrument No. 12561, the Hurds having actual as well as constructive notice of the deed covenant.

The defendants Rowe are the owners and occupants of Lot 113, Square 3125, improved by premises 118 Bryant Street, N. W. Their immediate grantors were the defendants Urciolo, who conveyed the property to them by deed dated March 10, 1945, recorded March 21, 1945 as Instrument No. 9208, the Rowes having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon them.

The defendants Savage are the owners and occupants of Lot 144, Square 3125, improved by premises 134 Bryant Street, N. W. Their immediate grantor was the defendant Florence E. Urciolo, who conveyed the property to them by 19 deed dated March 13, 1945, recorded March 30, 1945 as Instrument No. 10582, the Savages having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon them.

The defendant Stewart is the owner and occupant of Lot 136, Square 3125, improved by premises 150 Bryant Street, N. W. Her immediate grantor was Florence E. Urciolo, who conveyed the property to her by deed dated March 9, 1945, recorded March 21, 1945 as Instrument No. 9210, said defendant Stewart having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon her.

The defendant Florence E. Urciolo is the record owner of Lots 109, 135 and 139, Square 3125 as a "straw" party, the actual owner being the defendant, Raphael G. Urciolo, who had actual notice as well as constructive notice of the deed covenants binding said properties by letter dated June 17, 1944 from Henry Gilligan, attorney for plaintiffs in this case. Defendant Raphael G. Urciolo stated at the trial these properties were for sale to Negroes.

Defendants Urciolo filed Civil Action No. 27958 on March 6, 1945, seeking an "injunction and to quiet title" as the owners of the six properties described herein, naming as defendants all other owners of the 20 deed covenanted lots in the 100 block of Bryant Street, N. W., said action seeking an injunction restraining defendants "from attempting to obtain either equitable or legal relief by way of enforcement of said covenant" and declaring the covenant "null and void as a cloud on the respective titles of plaintiffs (Urciolos). After selling three of said properties to the defendants Rowe, Savage and Stewart, negroes, Civil Action No. 27958 was dismissed by their attorney, Charles H. Houston.

8. There has been no constant or substantial penetration of negroes into the area described in paragraphs 3 and 4 hereof sufficient to show that the purpose of the covenant herein has been frustrated or that the result of enforcing it would depreciate rather than enhance the value of the property involved, nor has it been shown that such area has so changed in its character and environment and its uses that

the purpose of the covenant cannot be carried out or that its enforcement would substantially lessen the value of the property.

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Conclusions of Law

1. The covenant involved in these actions is valid under decisions of the United States Court of Appeals for the District of Columbia and the Supreme Court of the United States.

2. There has been no trend or penetration of negroes in the area involved herein to bring these actions within the exception to the rule upholding such covenants, as set forth in *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48.

3. These cases involve the same area of the District of Columbia as that involved in *Mays v. Burgess*, 79 U. S. App. D. C. 343, decided January 29, 1945, and come within the purview of that decision enforcing the restrictive covenant.

4. The defense claim of laches in not asserting the alleged covenant against the properties immediately in the rear of plaintiffs in the 100 block of Adams Street; and in inexcusable delay in attempting to enforce the covenant is not well taken. There has been no laches or undue delay.

5. The deeds from defendants Ryan to defendants Hurd and from defendants Urciolo to defendants Rowe, Savage and Stewart are null and void, and judgment should be entered accordingly.

6. Defendants should be appropriately enjoined, and judgment should be entered accordingly.

F. DICKINSON LETTS,

Justice.

Dated: December 10, 1945.

Filed Dec. 10, 1945

In the District Court of the United States for the District of
Columbia

Civil Action No. 26,192

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

JAMES M. HURD, et al., Defendants

Civil Action No. 29,943

FREDERIC E. HODGE, et al., Plaintiff,

vs.

RAPHAEL G. URCILO, et al., Defendants

Judgment

These causes, consolidated, came on to be heard at this term, and thereupon, upon consideration thereof and pursuant to the Findings of Fact and Conclusions of law filed herein, and for the reasons set forth therein, it is, by the Court, this 10th day of December, 1945,

Ordered and Adjudged that the deed dated May 4, 1944, and recorded May 9, 1944, as Instrument No. 12561 among the Land Records of the District of Columbia, from Francis X. Ryan and Mary R. Ryan, his wife, to James M. Hurd and Mary I. Hurd, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W., is hereby declared to be in Francis X. Ryan and Mary R. Ryan, his wife.

It Is Further Ordered and Adjudged that the deed dated March 10, 1945, and recorded March 21, 1945 as Instrument No. 9208 among the Land Records of the District of Columbia, from Raphael G. Urciolo and Florence E. Urciolo, his wife, to Robert H. Rowe and Isabelle J. Rowe, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 113, Square 3125, improved by premises 118 Bryant Street, N. W., is hereby declared to be in Raphael G. Urciolo.

It Is Further Ordered and Adjudged that the deed dated March 13, 1945 and recorded March 30, 1945 as Instrument No. 10582 among the Land Records of the District of Columbia, from Florence E. Urciolo to Herbert E. Savage, and Georgia N. Savage, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 144, Square 3125, improved by premises 134 Bryant Street, N. W., is hereby declared to be in Florence E. Urciolo.

22 It Is Further Ordered and Adjudged that the deed dated March 9, 1945, and recorded March 21, 1945, as Instrument No. 9270 among the Land Records of the District of Columbia, from Florence E. Urciolo to Pauline B. Stewart be, and the same hereby is, declared null and void and of no effect, and the title to Lot 136, Square 3125, improved by premises 150 Bryant Street, N. W., is hereby declared to be in Florence E. Urciolo.

It Is Further Ordered and Adjudged that defendants Francis X. Ryan and Mary R. Ryan, his wife, as to Lot 114, Square 3125, Raphael G. Urciolo as to Lot 113, Square 3125, and Florence E. Urciolo, as to Lots 144, 136, 109, 135 and 139, Square 3125, and all persons in active concert or participation with them, and each of them, be and they hereby are, permanently enjoined from renting, leasing, selling, transferring or conveying any of said lots unto any Negro or colored person.

It Is Further Ordered and Adjudged that defendants James M. Hurd and Mary I. Hurd, his wife, as to Lot 114, Square 3125, Robert H. Rowe and Isabelle J. Rowe, his wife, as to Lot 113, Square 3125, Herbert E. Savage and Georgia N. Savage, his wife, as to Lot 144, Square 3125, and Pauline B. Stewart, as to Lot 136, Square 3125, and any and all negroes or colored persons in active concert or participation with them, or any of them, be, and they hereby are, permanently enjoined from renting, leasing, selling, transferring or conveying any and all of said lots.

It Is Further Ordered and Adjudged that defendants James M. Hurd and Mary I. Hurd, his wife, Robert H. Rowe and Isabelle J. Rowe, his wife, Herbert E. Savage and Georgia N. Savage, his wife, and Pauline B. Stewart, and all persons in active concert or participation with them, be, and they hereby are, ordered to remove themselves and all of their personal belongings, from the land and premises

now occupied by them within 60 days from November 20, 1945.

It Is Further Ordered and Adjudged that taxable costs be assessed against the defendants and each of them.

F. DICKINSON LETTS,

Justice.

23

Filed Jan. 11, 1946

In the District Court of the United States for the District of
Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URGIOLO, et al., Defendants

Notice of Appeal

Notice is hereby given this 10th day of January, 1946, that Raphael G. Urgiolo in proper person, Robert H. Rowe, Isabelle J. Rowe, Herbert B. Savage, Georgia N. Savage, and Pauline B. Stewart hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 10th day of December, 1945 in favor of Frederic E. Hodge, Lena A. Murray Hodge, Pasquale DeRita, Victoria DeRita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola and Margaret Giancola against the aforesaid defendants.

RAPHAEL G. URGIOLO, pp.,
907 N. Y. Ave.,

CHARLES H. HOUSTON,
615 F St., N. W.,

*Attorney for Defendants Named
Except Raphael G. Urgiolo.*

Mail copy to Henry Gilligan, attorney for plaintiffs,
Washington Loan & Trust Building, Washington, D. C.

24

Filed Feb. 19, 1946

In the District Court of the United States for the District of
Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCIOLO, et al., Defendants

Order Extending Time to File Record

Upon consideration of defendants' motion to extend the time for completing and filing the record of this cause on appeal to the United States Court of Appeals, and counsel for plaintiffs consenting to the extension, it is by the Court this 19th day of February, 1946,

Ordered, That the time for filing the record in the appellate court be extended to March 15, 1946.

(S.) ALEXANDER HOLTZOFF,

Justice.

I consent:

(S.) HENRY GILLIGAN,
Attorney for Plaintiffs.

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Filed Mar. 4, 1946

In the District Court of the United States for the District of
Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCIOLO, et al., Defendants

Order for Inclusion of Transcript of Evidence

Upon consideration of motion of defendants to file one copy of the transcript of evidence and transmit the same with the record on appeal, and thereupon, it is this 4th day of March, 1946, by the Court

Ordered, That leave is hereby granted to file one copy of the Transcript of Evidence herein, and the Court is directed

to include the same in the record on appeal and transmit the original Transcript of Evidence with the record on appeal.

(S.) F. DICKINSON LETTS,

Justice.

We consent:

(S.) HENRY GILLIGAN,

Attorney for Plaintiffs;

(S.) CHARLES H. HOUSTON,

Attorney for Defendant.

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Filed Jan. 23, 1946

In the District Court of the United States for the District
of Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,
vs.

RAPHAEL G. URICIOLO, et al., Defendants

Designation of Record

The Clerk will please prepare the record on appeal and include therein the following:

1. Complaint.
2. Motion for preliminary injunction.
3. Answer of defendants 1 to 7.
4. Order denying preliminary injunction, advancing cause and consolidating same with Civil 26192 for hearing.
5. Motion of Charles H. Houston for leave to withdraw as Counsel for defendant 1.
6. Order granting leave to withdraw.
7. Motion of defendant 7, for change of trial justice and affidavit of prejudice.
9. Transcript of testimony (See Civil 26-192).
10. Findings of fact and conclusions of law.
11. Judgment.
13. This designation.

CHARLES H. HOUSTON,

Attorney for Defendants 2 to 7,

616 F Street, Northwest.

RAPHAEL G. URICIOLO, pp.,

907 New York Avenue, N. W.

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Certificate of Service

I certify that this 23rd day of January, 1946, I forwarded copy of this designation to Henry Gilligan, Attorney for plaintiffs, Washington Loan and Trust Building, by mail postage prepaid.

CHARLES H. HOUSTON.

28 District Court of the United States for the District of
Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 27, both inclusive, to be a true and correct transcript of the record according to designation of record by counsel filed and made a part of this transcript, and in accordance with Rule 75 (g) of the Federal Rules of Civil Procedure for the District Courts of the United States, in action entitled Frederic E. Hodge, et al., Plaintiffs, vs. Raphael G. Urciolo, et al., Defendants, Civil Action No. 29943, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 12th day of March, 1946.

Clerk.

[SEAL.]

(4460)

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., APPELLANTS

v.

FREDERIC E. HODGE, et al., APPELLEES

No. 9197

RAPHAEL G. URCILO, et al., APPELLANTS

v.

FREDERIC E. HODGE, et al., APPELLEES

Appeals from the District Court of the United States for the
District of Columbia

Argued November 21, 1946

Decided May 26, 1947.

Raphael G. Urciolo, pro se, in No. 9197.

Mr. Charles H. Houston for appellants in both cases, except appellant Urciolo in No. 9197.

Mr. Henry Gilligan for appellees. *Mr. Thomas X. Dunn* also entered an appearance for appellees.

Before EDGERTON, CLARK and WILBUR K. MILLER, JJ.

CLARK, J.: By these appeals we are once again called upon to determine the validity of a restrictive deed covenant expressed in the following terms: "Subject also to the covenants that said lot shall never be rented; leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2000), which shall be a lien against said property."

The area involved in these actions is the first 20 lots of the 100 Block of Bryant Street, Northwest, improved by dwellings known as 114 to 152 Bryant Street, Northwest. All of these lots and dwellings were sold subject to the above restrictive deed covenant. The adjoining 11 lots improved by dwellings known as 154 to 174 Bryant Street, Northwest, are not subject to any such restriction and have been continuously occupied by Negroes for 20 years. The occupancy by white persons of the 20 lots and dwellings subject to the restriction

has been continuous¹ until the four deeds² complained of in these actions.

The final judgment of the District Court from which these appeals were taken declared null and void these four deeds to the Negro purchasers, ordered them to vacate the land and premises and permanently enjoined the renting, selling, leasing, transferring or conveying the said lots to any Negro or colored person.

The validity of the restrictive deed covenant before us now has been upheld by this Court on numerous occasions. *Torrey v. Wolves*, 56 App. D. C. 4, 6 F. (2d) 702; *Cornish v. O'Donoghue*, 58 App. D. C. 359, 30 F. (2d) 983, cert. denied, 279 U. S. 871; *Grady v. Garland*, 67 App. D. C. 73, 89 F. (2d) 817, cert. denied, 302 U. S. 694; *Hyndley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. (2d) 23, wherein we said: "In view of the consistent adjudications in similar cases, it must now be conceded that the settled law in this jurisdiction is that such covenants as this are valid and enforceable in equity by way of injunction."

Similarly, restrictive covenants expressed in agreements between the owners of land have been upheld by this Court in the following cases: *Corrigan v. Buckley*, 55 App. D. C. 30, 299 Fed. 899, appeal dismissed 271 U. S. 323; *Russell v. Wallace*, 58 App. D. C. 357, 30 F. (2d) 981, cert. denied, 279 U. S. 871; *Mays v. Burgess*, 79 U. S. App. D. C. 343, 147 F. (2d) 869, cert. denied, 325 U. S. 868, rehearing denied 325 U. S. 896.

The appellants here have presented no contention that is not answered by those decisions. Thus, what we said in *Mays v. Burgess* when it was before us for the first time is applicable here; "Unless, therefore, we are prepared to reverse and annul all that we have said on this subject, and to destroy contracts and titles to valuable real estate made and taken on the faith of our decisions, it follows that the only question now open for discussion is whether, under the rule announced in *Hyndley v. Gorewitz*, supra, the purpose of the restrictive condition has failed by reason of a change in the character of the neighborhood, so that its enforcement would impose a hardship rather than a benefit upon those who were parties to its terms." We went on, in that case, to hold that "no such change or transformation in the character of the property has occurred." *Mays v. Burgess* involved the same area as that concerned in the instant cases

¹ Except for three transactions where the Negroes involved either did not occupy or moved on protest without the necessity of legal proceedings.

² Deed dated May 4, 1944, and recorded May 9, 1944, as Instrument No. 12561 among the Land Records of the District of Columbia, from Francis X. Ryan and Mary R. Ryan, his wife, to James M. Hurd and Mary L. Hurd, his wife, concerning Lot 114, Square 3125, improved by premises 116 Bryant Street, Northwest; deed dated March 16, 1945, and recorded March 21, 1945, as Instrument No. 9206 among the Land Records of the District of Columbia, from Raphael G. Urciolo and Florence E. Urciolo, his wife, to Robert H. Rowe and Isabelle J. Rowe, his wife, concerning Lot 113, Square 3125, improved by premises 118 Bryant Street, Northwest; deed dated March 13, 1945, and recorded March 30, 1945 as Instrument No. 10682 among the Land Records of the District of Columbia, from Florence E. Urciolo to Herbert E. Savage and Georgia N. Savage, his wife, concerning Lot 144, Square 3125, improved by premises 134 Bryant Street, Northwest; and deed dated March 9, 1945, and recorded March 21, 1945 as Instrument No. 9210 among the Land Records of the District of Columbia, from Florence E. Urciolo to Pauline B. Stewart concerning Lot 136, Square 3125, improved by premises 150 Bryant Street, Northwest.

and is controlling here, especially in view of what we said when that case was before us for a second time, 80 U. S. App. D. C. 236, 152 F. (2d) 123: "When this case was here before it was argued at great length that the character of the neighborhood had changed since the making and recording of the covenants, and the points of hardship and lack of reasonable housing accommodations in the District of Columbia, now reiterated, were stressed and urged. We considered both points and held that they were not sufficient to justify the abrogation of the rule of law which this court had applied consistently in similar cases over a period of twenty-five years. The fact that since the case was originally heard below, a similar covenant, covering property in an adjoining block, has expired by time limitation and four purchases by colored people have been made, would not, even if it had occurred before decision, have changed the result. As we said in our former opinion, the neighborhood, consisting of approximately one thousand homes, churches and business properties, was exclusively occupied by persons of the white race, under similar restrictive agreements or deed covenants. The infiltration of four colored families would not have required our applying the rule we did in *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. (2d) 23, where we held the restrictive condition had failed by reason of the change in the neighborhood, so that its enforcement would impose a hardship rather than an advantage to those who complied with its terms."

It is to be further noted that while the "change in neighborhood" argument was presented to us in appellants' brief, this contention was expressly repudiated by appellant Urciolo at oral argument.

In re-affirming our holding that the restrictive deed covenant here involved is valid and enforceable by injunction we have again thoroughly considered the contention that such a restriction constitutes an illegal restraint on alienation. We adhere to what we said on this point in *Mays v. Burgess*, 79 U. S. App. D. C. 343 at 345. Although that case involved a restriction which was to be in effect for a designated length of time, 21 years only, and the instant covenant involves a perpetual restriction, we adopt what we said there as applying here. We note that there is a decided division in authority as to the validity and enforceability of such a perpetual restriction.³ We further note that in some jurisdictions the validity of the restrictive covenant or agreement turns on a distinction in terminology between restrictions as to ownership and restrictions as to use and occupation.⁴ Such restrictions as to use and occupancy are generally held valid and enforceable in equity, even in those jurisdictions holding restrictions on ownership invalid as restraints on alienation.⁵

However, in this jurisdiction the validity and enforceability of the covenant or agreement does not turn on such a distinction and we have no conflict in our decisions, which have, for over 25 years, uniformly upheld the validity of these restrictive conditions, whether by deed covenant or agreement between property owners, whether for

³ 162 A. L. R. 180, supplementing annotations in 114 A. L. R. 1237, 66 A. L. R. 531 and 9 A. L. R. 120; 5 *Tiffany Real Property* (Third Edition) Sec. 1345.

⁴ 162 A. L. R. 180.

⁵ *Burkhardt v. Lofton*, (Cal.) 146 P. (2d) 720; *Fairchild v. Raines*, (Cal.) 151 P. (2d) 200; *Stone v. Jones*, (Cal.) 152 P. (2d) 19.

a designated length of time or perpetual, and whether against alienation, use and occupancy or both.⁶ We observe that in other jurisdictions the majority of recent decisions are in accord with our holding.⁷ See also The American Law Institute's Restatement of The Law of Property, dealing with Perpetuities and other Social Restrictions, Sec. 406, Comments l and o.

Affirmed.

EDGERTON, J., *dissenting*. The court holds that perpetual deed covenants forbidding sale of homes to Negroes are valid and enforceable by injunctions cancelling sales, evicting Negroes from homes that they have bought, and preventing sales to other Negroes. I think this erroneous for five reasons, each independent of the other, four. The covenants are void as unreasonable restraints on alienation. They are void because contrary to public policy. Their enforcement by injunction is inequitable. Their enforcement by injunction violates the due process clause of the Fifth Amendment. Their enforcement by injunction violates the Civil Rights Act which requires that "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." R. S. §1978, 8 U. S. C. § 42.

Despite the great importance of the questions whether racial restrictive covenants are valid and whether they are enforceable by injunction, the Supreme Court has never ruled on either.¹ The opposite is often assumed. In this court's recent case of *Mays v. Burgess*² both the principal opinion and the concurring opinion appear to reflect a belief that the issues then and now before this court have been decided by the Supreme Court. The court now relies on that case among others.

The erroneous impression that the Supreme Court has ruled on these questions results from misinterpretation of *Corrigan v. Buckley*, 271 U. S. 323 (1926). In that case a bill was filed in the trial court of the District of Columbia to enforce a racial restrictive covenant by injunction. The defendants move to dismiss the bill on the sole ground that the "covenant is void" because in conflict with the Constitution and the laws of the United States and with public policy. The trial court overruled the motions and granted the injunction, and this court affirmed.³ This court ruled only that the covenant was

⁶ See cases cited from this jurisdiction, *supra*.

⁷ *Dooley v. Savannah Bank & Trust Co.*, (Ga.) 34 S. E. (2d) 522 (perpetual); *Lion's Head Lake v. Brzezinski*, (N. J.) 43 A. (2d) 729 (perpetual); *Lyons v. Wallen*, (Okla.) 133 P. (2d) 555 (99 years); *Steward v. Cronan*, (Colo.) 98 P. (2d) 999 (designated length of time); *Thorpe v. Herdt*, (Mo.) 130 S. W. (2d) 175 (20 years); *Vernon v. R. J. Reynolds Realty Co.*, (N. C.) 35 S. E. (2d) 710 (50 years).

¹ The few state courts that have passed on the questions are divided. Cases are collected in McGovney, *Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional*, 33 CALIF. L. REV. 5, 10 (1945).

² 79 U. S. App. D. C. 343, 147 F. 2d 899; certiorari denied, two Justices dissenting, 325 U. S. 868, rehearing denied, 325 U. S. 896.

³ 55 App. D. C. 30, 299 Fed. 999 (1934).

not unconstitutional or contrary to public policy or void. The pleadings presented no other issue.

Corrigan v. Buckley reached the Supreme Court on appeal and not on certiorari. Section 250 of the Judicial Code as it read on the critical date authorized appeals in six sorts of cases, including (Third) "cases involving the construction or application of the Constitution of the United States . . ." and (Sixth) "cases in which the construction of any law of the United States is drawn in question by the defendant."⁴ The defendants based their appeal solely on the contention that the covenant was "void" because it violated the Fifth, Thirteenth and Fourteenth Amendments of the Constitution and also the Civil Rights Act, §§ 1977, 1978 and 1979 of the Revised Statutes. The Supreme Court held that since the Fifth and Fourteenth Amendments dealt only with government action and not with action of private persons, and the Thirteenth only with involuntary servitude, the contention that these amendments made the *covenant void* raised no substantial question.⁵ One of the sections of the Civil Rights Act on which the appellants relied, R. S. § 1978, provides that all citizens shall have the same right as white citizens to purchase and hold property. The Court decided that the several sections, "like the Constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property. There is no color for the contention that they rendered the indenture void . . . We therefore conclude that neither the constitutional nor statutory questions relied on as grounds for the appeal to this Court have any substantial quality or color of merit, or afford any jurisdictional basis for the appeal."⁶ For want of jurisdiction, therefore, and without at all implying that the appealed judgment was right, the Court dismissed the appeal. Since it had no jurisdiction it could decide no question that was not involved in reaching that conclusion. Accordingly it decided nothing with regard to racial restrictive covenants except that *the Constitution and the Civil Rights Act* plainly do not make them void.⁷

No contention that either the Constitution or the Civil Rights Act prohibited *enforcement by injunction* of such covenants was raised by any pleading in any court, or was considered by the District Court, or was considered by this court. Despite that fact, by brief and argument the appellants undertook to raise in the Supreme Court the contention that "*the decrees of the courts below constitute a violation of the Fifth and Fourteenth Amendments to the Constitution, in that they deprive the appellants of their liberty and property without due process of law.*"⁸ The Court pointed out that since this contention was not raised by the pleadings it could not give the Court jurisdiction of the appeal, and then added, without a word of argu-

⁴ 36 Stat. 1159.

⁵ "It is obvious that none of these Amendments prohibited private individuals from entering into contracts respecting the control and disposition of their property; and there is no color whatever for the contention that they rendered the indenture void." 271 U. S. 323, 330.

⁶ 271 U. S. 323, 331.

⁷ In my dissent in the *Mays* case, 79 U. S. App. D. C. 343, 349, par. (4), I mistakenly attributed greater breadth to the *Corrigan* decision.

⁸ 271 U. S. 323, 334; italics supplied.

ment, six words of dictum adverse to the contention itself: "it likewise is lacking in substance."⁹

The difference between the only point decided by the Supreme Court—that the Constitution and the Civil Rights Act plainly do not make a racial restrictive covenant void—and our own court's proposition that such a covenant is both valid and enforceable by injunction, is very great. Since the Supreme Court had no jurisdiction it could not decide even whether the covenant is void or valid, but necessarily left open the questions (1) whether it is "void because contrary to public policy"¹⁰ and (2) whether it is void as an unreasonable restraint on alienation. Regardless of whether damages can or cannot be recovered for its breach, its specific enforcement by injunction, which much more directly and effectively prevents Negroes from buying and using the property, may be forbidden either (3) by the Constitution, (4) by the Civil Rights Act, or (5) by principles of equity. The Supreme Court did not and could not decide any of these questions in *Corrigan v. Buckley*. Its dictum touched only the third of these questions.

Aside from that dictum and the narrow point on which the Supreme Court actually ruled, this court's present decision that racial restrictive covenants are valid and enforceable by injunction rests only on our own past decisions to like effect. In my opinion those decisions, which were reached without full consideration of the questions involved, are erroneous and should be overruled. I think all five of the questions enumerated in the preceding paragraph must be answered in appellants' favor. If any one of them is so answered the appealed judgments must be reversed.¹¹

The fifth question requires little discussion. It is enough to point out that the familiar principle of "balancing equities" precludes any

⁹"And while it was further urged in this Court that the decrees of the courts below in themselves deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under paragraph 3 of the Code provision, it was not raised by the petition for the appeal or by any assignment of error, either in the Court of Appeals or in this Court; and it likewise is lacking in substance." 271 U. S. 323, 331.

¹⁰The Court pointed out that since it had no jurisdiction of the appeal it could not rule upon the contention that the covenant "is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant." *Ibid.* p. 332.

¹¹In addition to these five general grounds for reversal there are at least two special grounds. (1) The covenants were intended to increase the value of the restricted property and to maintain a white neighborhood. The record shows that Negroes will pay much more than whites for the property and that the neighborhood is no longer white. Enforcement of the covenants defeats their economic purpose and does not accomplish their other purpose. The rule of *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. 2d 23, therefore applies. (2) The injunctions are broader than the covenants. The covenants are that the lots "shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person..." There is no covenant against use or occupation. The injunctions not only set aside transfers but also order the colored appellants to "remove themselves and all of their personal belongings from the land." A covenant against rental, lease, sale, etc., is an entirely different thing from a covenant against use and occupation. This court has recently approved practically the same distinction which it now ignores. *Gospel Spreading Ass'n v. Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878.

injunction in this case because, in view of the present housing situation, the extreme hardship which injunctions will inflict upon the appellants greatly outweighs any benefits which the appellees may possibly derive from them; and that "especially courts of equity; may appropriately withhold their aid where the plaintiff is using the right asserted contrary to the public interest."¹² I discuss the other four questions in the following order: I, the Constitution; II, the Civil Rights Act; III, restraint on alienation; IV, public policy.

I. *The Constitution.* In *Buchanan v. Warley*, 245 U. S. 60 (1917), the Supreme Court held that enforcement of a Louisville ordinance which forbade Negroes to move into predominantly white city blocks and whites to move into predominantly Negro city blocks would violate the Constitution and also, apparently, the Civil Rights Act.¹³ The Court said: "The concrete question here is: May the occupancy, and, necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the States, or by one of its municipalities, solely because of the color of the proposed occupant of the premises?" (p. 75) "Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color . . . These enactments did not deal with the social rights of men, but with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color . . . The Fourteenth Amendment and these statutes enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color." (pp. 78, 79) "We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law." (p. 82) The Court held that the ordinance invaded even the rights of a white vendor, who could therefore avoid it and enforce performance of a colored purchaser's contract.

But "so far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose."¹⁴ Specifically, ordinances that limit what may be done with property in a given area are constitutional and enforceable unless they "are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."¹⁵ So, as the Court held in the *Euclid* case, a city may exclude businesses and even apartment houses from a residential area merely because the city thinks it best to segregate them elsewhere. In the light

¹² *Morton Salt Co. v. G. S. Suppiger Co.*, 314 U. S. 488, 492.

¹³ R. S. § 1977, 1978. § 1978, which assures to all citizens the same right as white citizens to purchase and hold property, is discussed in part II of this opinion.

¹⁴ *Nebbia v. New York*, 291 U. S. 502, 537. *Reits v. Mealey*, 314 U. S. 33, 36; *Prince v. Massachusetts*, 321 U. S. 158, 169.

¹⁵ *Euclid v. Ambler Realty Co.*, 272 U. S. 355, 395. *Nectow v. Cambridge*, 277 U. S. 183, 187.

of the *Euclid* case, therefore, *Buchanan v. Warley* determines among other things that it is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare, to prevent property in a white neighborhood from being transferred to and used by Negroes.

The upshot is that Negroes have a constitutional right to buy and use, and whites to sell to Negroes, whatever real property they can without direct government interference based on race.

Such interference is forbidden even when it accords with the wishes of the inhabitants of a neighborhood as well as the act of a legislature. A New Orleans ordinance forbade Negroes to establish residence in a white community and whites to establish residence in a Negro community (as defined), "except on the written consent of a majority of the persons of the opposite race inhabiting such community." On the authority of the *Buchanan* case the Supreme Court held this ordinance void.¹⁶ If an ordinance forbade Negroes to buy a house in a white community against the written dissent of a former owner of the house and a present owner of a neighboring house, obviously the ordinance and any injunction based upon it would be unconstitutional. The present question is whether an injunction which does the same thing without the support of an ordinance is constitutional.

The specific rule, adjudged by the Supreme Court in the *Buchanan* and *Harmon* cases, that it is arbitrary to exclude a race from a neighborhood is an instance of the general rule that "discriminations based on race alone are obviously irrelevant and invidious."¹⁷ It has been contended that enforcement of covenants which exclude a race from a neighborhood does not involve discrimination because it permits reciprocity. This amounts to saying that if Negroes are excluded from decent housing they may retaliate by excluding whites from slums. Such reciprocity is not merely imaginary and unequal but irrelevant. Because appellants¹⁸ are Negroes the court deprives them of homes which they could keep if they were white. Discrimination against them because of color is not merely relative but absolute. The imagined possibility that others may suffer similar discrimination because they are white is as irrelevant as the certainty that others will suffer it because they are Negroes. Both the Louisville ordinance and the New Orleans ordinance which excluded Negroes from white neighborhoods also excluded whites from Negro neighborhoods. Since they undertook to discriminate because of race against members of both races they had a formal reciprocity that restrictive covenants lack. This did not reconcile their enforcement with the requirements of due process.

Restrictive covenants are not self-executing. This case arises because persons whom they purport to bind have violated them. The white appellants have sold restricted property to the colored appellees. The appellees, neighbors not directly involved in the sales, seek to set them aside. For that purpose they necessarily invoke the aid of a court of equity. If all persons whom the covenants purport to bind had refused to sell to Negroes, no government action would be

¹⁶ *Harmon v. Tyler*, 273 U. S. 668, reversing *Tyler v. Harmon*, 160 La. 943, 107 So. 704. Cf. 158 La. 439, 104 So. 200.

¹⁷ *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192, 203.

¹⁸ Though white grantors as well as colored grantees have appealed, throughout this opinion the unqualified word appellants refers only to the colored appellants.

involved but only the action of private individuals, and no question of due process of law would arise. The situation then would be comparable to the refusal of the innkeeper in the *Civil Rights Cases*¹⁹ to serve Negroes. Even if some landowners had persuaded or hired others not to sell to Negroes, or Negroes not to buy, there would still be only private action, whether legal or illegal, and no due process question. But in this case private means have failed to produce compliance with the covenant and a court has been asked to enforce it. If the colored appellants refuse to vacate the premises in obedience to the court's decree it will be enforced against them through the court's power to punish for contempt; they may be imprisoned or fined, and dispossessed by force if necessary. The action that begins with the decree and ends with its enforcement is obviously direct government action. As this court said in *Corrigan v. Buckley*, no Negro has "the constitutional power to compel sale and conveyance to him of any particular private property." But no such question was before the court then or is before it now. Appellants claim no constitutional power to compel sale and conveyance of any property. The question is whether a court of the United States has the constitutional power to cancel deeds which willing sellers have made to willing buyers, and evict the buyers from the property, because the buyers are Negroes.

Since courts are arms of government they are subject, like legislatures and executive officers, to the restrictions that the Constitution imposes on government. Every case that holds legislation unconstitutional holds in terms or in effect that its judicial enforcement would be unconstitutional. The Constitution does not exempt any kind of judicial action from the requirements of due process of law. Not only legislation and procedure but judicially adopted rules of substantive law, including equity, are invalid when they conflict with these requirements.²⁰ Rules which the due process clause forbids legislatures to enact it forbids courts to adopt, for substantive due process is not a matter of method. A judicial decree which would be invalid if it had legislative sanction is not validated by lack of legislative sanction. Since racial restrictions on transfer and use of property are "clearly arbitrary and unreasonable" and do not promote the general welfare, the Constitution forbids courts to enforce such restrictions even when a legislature, for supposed public purposes, has attempted to impose them. Such restrictions are not less arbitrary and unreasonable, and not more conducive to the general welfare, when private persons acting without legislative sanction have attempted to impose them for private purposes. It follows that the Constitution forbids courts to enforce such restrictions in the second case, which is this case, as clearly as in the first, which is *Buchanan v. Warley*. It is strangely inconsistent to hold as this court does that although no legislature can authorize a court, even for a moment, to prevent Negroes from acquiring and using particular

¹⁹ 109 U. S. 3. In those cases the Court expressly distinguished "action of State officers executive or judicial" (p. 11); also action of individuals supported by "State authority in the shape of laws, customs, or judicial or executive proceedings" (p. 17).

²⁰ *Ex parte Virginia*, 100 U. S. 339; *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U. S. 673, 678-680; *Powell v. Alabama*, 287 U. S. 45; *Cantwell v. Connecticut*, 310 U. S. 296, 307-311; *A. F. of L. v. Swing*, 312 U. S. 321; *Bridges v. California*, 314 U. S. 232; *Bakery Drivers Local v. Wohl*, 315 U. S. 769; *Pennkamp v. Florida*, 328 U. S. 331. Cf. *McGowrey, op. cit. supra* note 1.

property, a mere owner of property at a given moment can authorize a court to do so for all time. Either the due process clauses of the Constitution do not forbid governments to prevent Negroes from acquiring and using particular property, in which case they do not forbid courts to enforce racial restrictions which statutes have imposed; or these clauses do forbid governments to prevent Negroes from acquiring and using particular property, in which case they forbid courts to enforce racial restrictions which covenants have imposed. *Buchanan v. Warley* rules out the first alternative.

As Judge Ross, the donor of the American Bar Association's Ross Essay Prize, said long ago in refusing to enforce by injunction a covenant against transfers to Chinese: "It would be a very narrow construction of the constitutional amendment in question and of the decisions based upon it . . . to hold that, while state and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the state may lawfully do so by contract, which the courts may enforce . . . The courts should no more enforce the one than the other."²¹

All this is said with complete deference to the rule of the *Corrigan* case that the Constitution does not make racial covenants void.²²

II. *The Civil Rights Act.* White citizens have, beyond question, the right to purchase the property in suit from willing sellers and to hold it. This court forbids colored citizens to do so. It thereby rules that they have no right to do so. The court does not say, and it would be a contradiction in terms to say, "Despite the fact that we forbid colored citizens to purchase and hold this property they have a right to do so." I see no possible escape from the fact that the court's ruling violates not only the due process clause of the Fifth Amendment but also the Civil Rights Act, § 42 of Title 8 of the United States Code, which expressly provides that "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."²³ A statute which declares or confers a right means, if it means anything, that courts shall recognize and protect the right. Since (1) appellants are citizens of the United States, (2) the Act assures all citizens the same right as white citizens to purchase and hold property, and (3) white citizens have the right to purchase and hold the property in suit, the Act requires the courts to recognize and protect the very right which this court denies and destroys.

²¹ *Gandolfo v. Hartman*, 40 Fed. 181, 182, 16 L. R. A. 377-378 (C. C., S. D. Calif., 1892).

²² To say that the Constitution forbids direct and actual enforcement of a racial covenant by injunction—the only remedy which is intended to and necessarily does prevent Negroes from acquiring and using the restricted property—is not to say that it forbids awarding to a neighboring property owner such damages, if any, as an executed sale to a Negro may be shown to have caused.

²³ R. S. § 1978. The words are taken without material change from the Civil Rights Act of April 9, 1866, 14 Stat. 27, § 1.

Obviously the District of Columbia is within the meaning of the term "every State and Territory" as used in this statute. Cf. *Talbott v. Silver Bow County*, 139 U. S. 438, 444; *Geofroy v. Riggs*, 133 U. S. 258. And since Congress has the power of a state legislature in the District of Columbia the statute is plainly valid there.

Nothing is alleged or found against appellants except their color. Since the injunctions are based on covenants alone and the covenants are based on color alone, ultimately the injunctions are based on color alone. Even if they were based on color in combination with other factors they would still violate the Act. The Act prohibits injunctions which depend in any degree upon the fact that the persons enjoined are colored, for any restriction which is imposed upon the right of colored citizens to purchase and hold property and would not be imposed upon the right of white citizens to purchase and hold the same property. It denies to colored citizens "the same right . . . as is enjoyed by white citizens."

It makes no difference that the court denies the right of Negroes to purchase and hold certain property only and not all the property in the District of Columbia. Much of the land in the District is covered by covenants like those in suit. Though these injunctions refer only to appellants' land, denying the right of appellants and other Negroes to buy this land has the practical effect of denying the right of any Negro to buy any land covered by any such covenant. Moreover, the conflict between the Act and the injunctions does not depend upon the fact that the injunctions have a general effect. If a municipal legislature were to pass an ordinance forbidding Negroes to purchase and hold precisely the land in suit, and no other, obviously the court could not prevent them from purchasing and holding it, since such prevention would violate the Act of Congress. I think it quite as plain that the court violates the Act of Congress when, without even the excuse of municipal legislation, it prevents Negroes from purchasing and holding this property. The expressed will of a former property-owner cannot authorize the court to deny a right which the expressed will of a legislature could not authorize it to deny.

Any opinion as to the reasonableness or desirability of preventing Negroes from purchasing and holding this property is irrelevant to the present point. The Constitution and the Civil Rights Act have foreclosed the matter. The right to buy and use anything that whites may buy and use is conferred upon Negroes implicitly by the due process clauses of the Fifth and Fourteenth Amendments and explicitly by the Civil Rights Act. Of the civil rights so conferred, none is clearer and few are more vital than the right to buy a home and live in it.

The *Corrigan* case holds that the Civil Rights Act does not make racial covenants void, but the Supreme Court has never held that the Act does not forbid affirmative governmental denial and destruction of the right of Negroes to acquire property. The *Buchanan* case holds the contrary.

III. *Restraint on Alienation.* "The underlying principle which operates throughout the field of property law is that freedom to alienate property interests which one may own is essential to the welfare of society. [This assumption rests] in part upon the necessity of maintaining a society controlled primarily by its living members, in part upon the social desirability of facilitating the utilization of wealth, and in part upon the social desirability of keeping property responsive to the current exigencies of its current beneficial owners. Restraints on alienation are from their very nature inconsistent with the policy of freedom of alienation. Thus, to uphold them, justification must be found in the objective that is thereby sought to

be accomplished or on the ground that the interference with alienation in the particular case is so negligible that the major policies furthered by freedom of alienation are not materially hampered."²⁴ Elaborating this analysis the American Law Institute lists six factors which tend, when present, to make restraints on alienation reasonable and valid: "1. the one imposing the restraint has some interest in land which he is seeking to protect by the enforcement of the restraint; 2. the restraint is limited in duration; 3. the enforcement of the restraint accomplishes a worthwhile purpose; 4. the type of conveyances prohibited are ones not likely to be employed to any substantial degree by the one restrained; 5. the number of persons to whom alienation is prohibited is small . . . ; 6. the one upon whom the restraint is imposed is a charity."²⁵

By these accepted standards, the covenants in suit are clearly unreasonable and void considered merely as restraints on the freedom of owners to alienate their property.²⁶ Of the six favorable factors which the Institute enumerates, (1) only, if any, is present here. (2): The restraint is perpetual. (3). Enforcement of the restraint in this case does not accomplish its purpose of maintaining a white neighborhood and defeats its purpose of increasing the value of the property. Moreover a purpose which, as *Buchanan v. Warley*²⁷ holds, legislatures are constitutionally forbidden to accomplish, cannot be considered a "worthwhile" purpose. Part IV of this opinion is devoted to showing that instead of being worthwhile these covenants do great harm. (4). The "type of conveyances prohibited" would be much "employed . . . by the one[s] restrained," for the record shows that the restricted property can be sold to Negroes for much more than whites will pay for it. (5). "The number of persons to whom alienation is prohibited" is enormous. Such persons are more than a quarter of the population of the District of Columbia. In respect to the number of possible purchasers as well as the price which some of them are ready to pay, the local owners' market is most severely as well as permanently impaired. No other sort of restraint of any comparable degree of severity has ever been upheld.

IV. *Public Policy.* Racial restrictive covenants have been defended on two grounds. They are said to increase the value, i.e. the price, of the restricted property, and to prevent racial conflict. If the first proposition is true,²⁸ which is very doubtful in the District of Columbia,²⁹ it is no defense of these covenants from the point of view of public policy, but quite the contrary, since the prices of homes are inflated above any level that can be thought socially desirable. The second proposition assumes that racial conflict is likely to result when

²⁴ Am. Law Inst., *RESTATEMENT OF THE LAW OF PROPERTY* (1944) pp. 2379-80.

²⁵ *Op. cit.* § 406, Comment i.

²⁶ Quite inconsistently the Institute, in § 406, Comment l, qualifiedly endorses such covenants.

²⁷ 245 U. S. 60; cf. *Euclid v. Ambler Realty Co.*, *supra* note 15.

²⁸ Myrdal's general conclusion on this question is that since there is usually a (white) movement out of a neighborhood when Negroes begin to move in, prices usually drop at first, but that they "rise again at least to the level justified by the aging and lack of improvement of the buildings." *Op. cit.*, *infra* note 36, p. 623. *Cf.* note 35.

²⁹ Both in this case and in the *Mays* case, 79 U. S. App. D. C. 343, 348, 147 F. 2d 869 (dissenting opinion), the record shows that the restricted property can be sold to Negroes for much more than whites will pay for it. There is no reason to suppose that this is not typical of the local situation.

whites and Negroes live near each other. Familiar facts refute this assumption. In unrestricted areas within the economic reach of Negroes, and particularly along the boundaries between restricted and unrestricted areas, whites and Negroes do live near each other and racial conflict does not result. Serious students of the subject believe that enforced housing segregation increases rather than diminishes the possibility of racial conflict.³⁰ If the satisfaction which many of the whites in restricted areas may derive from excluding Negroes is to be given weight, it must be weighed against the dissatisfaction which Negroes may feel at being excluded.

Any contention that public welfare is on the whole promoted by preventing Negroes from buying homes in white neighborhoods is refuted as a matter of law by *Buchanan v. Warley*.³¹ If it were not "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare"³² to prevent Negroes from buying homes in white neighborhoods, legislation directed to that end would be due process of law. *Buchanan v. Warley* determines that it is not due process of law. Since racial restrictive covenants are directed to the same end, it follows that they also do not promote the general welfare. *Buchanan v. Warley* does not exclude the theoretical possibility that these covenants might be merely neutral in relation to the general welfare. But the fact is that they do great and varied harm, are therefore clearly contrary to public policy, and should be held void for that reason. Moreover the Civil Rights Act discussed in part II of this opinion would be, if it were nothing more, a declaration by Congress that the public policy of the United States forbids preventing Negroes from buying homes because they are Negroes.

The housing shortage in the District of Columbia has long been acute. The shortage of decent housing, or any housing, for Negroes is particularly acute. They are largely confined to wretched quarters in overcrowded ghettos. These facts are commonly known and undisputed.³³ The correlation of bad and overcrowded housing with delinquency, disease and death has often been proved. The Negro death rate from tuberculosis in the District of Columbia is 4½ times

³⁰ "Chicago [where segregation prevails] has been an area of racial tension for the past few years and it is generally admitted that there can be no permanent easement of this tension until something fundamental is done about the housing of Negroes in the city." Robert C. Weaver, *Race Restrictive Housing Covenants*, 20 JOURNAL OF LAND AND PUBLIC UTILITY ECONOMICS 183, 187 (1944). Cf. *Negro Housing* (1932), quoted *infra* at note 37.

³¹ *Supra* 245 U. S. 60.

³² *Euclid v. Ambler Realty Co.*, *supra* note 15.

³³ Cf. note 15 of the dissenting opinion in *Mays v. Burgess*, 79 U. S. App. D. C. 343, 350 (1945).

Even in the middle thirties, before the acute housing emergency arose, the National Capital Housing Authority estimated that 14,000 Negro families out of 30,253 were "living under indecent, unsafe and insanitary conditions." Report of the National Capital Housing Authority for the Ten-Year Period 1934-1944, pp. 157, 167.

Between July and November 1946 the Bureau of the Census made a "sample survey" which showed that the "gross vacancy rate" for privately financed dwellings in the metropolitan area was 1.0 percent in white neighborhoods and 0.4 percent in Negro neighborhoods, and that only "three-fourths of the private vacancies in the area were habitable; of these, only one-sixth were being offered for rent or sale... Approximately one-fourth of the married white World War II veterans and seven-tenths of the married Negro veterans in the Washington area were doubling up with relatives or friends or were living in rented

the white, the Negro maternity death rate 5 times the white, and the Negro death rate from all causes 40 percent higher than the white.³⁴ Though these differences are not due entirely to the inferiority of Negro housing no one questions the fact that they are due partly to that cause.

The inferiority of Negro housing is not due entirely to racial covenants, but no one questions the fact that it is due in part to racial covenants. Covenants prevent free competition for a short supply of housing and curtail the supply available to Negroes. They add an artificial and special scarcity to a general scarcity, particularly where the number and purchasing power of Negroes as well as whites have increased as they have recently in the District of Columbia. The effect is qualitative as well as quantitative. Exclusion from decent housing confines Negroes to slums to an even greater extent than their poverty makes necessary. Covenants exclude Negroes from a large fraction—no one knows just how large—of the decent housing in the District of Columbia. Some of it is within the economic reach of some of them. Because it is beyond their legal reach, relatively well-to-do Negroes are compelled to compete for inferior housing in unrestricted areas, and so on down the economic scale. That enforced housing segregation, in such circumstances, increases crowding, squalor, and prices³⁵ in the areas where Negroes are compelled to live is obvious. It results in "doubling up," scandalous housing conditions for Negroes, destroyed home life, mounting juvenile delinquency, and other indications of social pathology which are bound to have their contagious influence upon adjoining white areas."³⁶

rooms, trailers, or tourist cabins... One-tenth of the married white veterans and two-tenths of the married Negro veterans lived in dwelling units which needed major repairs or lacked one or more standard plumbing facilities—running water, private flush toilet, and private bath." Bureau of the Census, "Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Washington, D. C., Metropolitan District," Press Release of Feb. 4, 1947.

"Report of the Government of the District of Columbia for Year-ended June 30, 1946, pp. 115, 117.

"No statistical study has been made which shows unequivocally that Negroes pay higher rents for equivalent apartments but this seems to be the opinion of all those—including white real estate agents—who have looked into the matter." Myrdal, *op. cit. infra* note 36, p. 633. "Not only does there seem to be consensus on the matter among those who have studied the Negro housing problem, but there is also a good logical reason for it; housing segregation. Particularly when the Negro population is increasing in a city, it is hard to see how this factor can fail to make Negro rents increase to an even greater extent than would have been the case if the Negroes had been free to seek accommodations wherever in the city they could afford to pay the rent." *Ibid.* p. 379. Cf. note 29 *supra*.

"Gunnar Myrdal, *An American Dilemma. The Negro Problem and Modern Democracy* (1944), p. 636. In 1937 the Carnegie Corporation recognized the need, for use in allocating its own funds and also for general public use, of "a comprehensive study of the Negro in the United States, to be undertaken in a wholly objective and dispassionate way as a social phenomenon." p. ix.

"There was no lack of competent scholars in the United States who were deeply interested in the problem and had already devoted themselves to its study, but the whole question had been for nearly a hundred years so charged with emotion that it appeared wise to seek as the responsible head of the undertaking someone who could approach his task with a fresh mind, uninfluenced by traditional attitudes or by earlier conclusions, and it was therefore decided to 'import' a general director... The search ended in the selection of Dr. Gunnar Myrdal, a scholar who despite his youth had already achieved an international reputation as a social economist, a professor in the University of Stockholm, economic adviser to the Swedish Government, and a member of the Swedish Senate. Dr. Myrdal had a decade earlier spent a year in the United States as a Fellow

Neither the present nor any previous opinion of this court questions or considers these facts. The judgments appear to rest upon the theory that they are unimportant.

As long ago as 1932, when the situation was less acute, the Committee on Negro Housing of the President's Conference on Home Building and Home Ownership said in its Report: "Segregation . . . has kept the Negro-occupied sections of cities throughout the country fatally unwholesome places, a menace to the health, morals and general efficiency of cities, and 'plague spots for race exploitation, friction and riots.'" ²⁷ Racial restrictive covenants "exist today in thousands of American communities." ²⁸ Housing segregation may therefore be expected to continue in thousands of communities as long as courts continue to enforce racial restrictive covenants by injunctions. But "If the Court should follow up its action of declaring all local laws to segregate Negroes unconstitutional by declaring illegal also the private restrictive covenants, segregation in the North would be nearly doomed, and segregation in the South would be set back slightly." ²⁹

The Charter of the United Nations provides that "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race. . . ." and that "all Members pledge themselves to take joint

of the Spelman Fund, and when the invitation was extended to him by the Corporation in 1937, was about to make a second visit at the invitation of Harvard University to deliver the Godkin Lectures. It was understood that he should be free to appoint and organize a staff of his own selection in the United States and that he should draw upon the experience of other scholars and experts in less formal fashion, but that the report as finally drawn up and presented to the public should represent and portray his own decisions." Foreword by F. P. Keppel, then President of the Carnegie Corporation, pp. vi, vii. Dr. Myrdal and a large group of American experts in various fields devoted years of investigation and research to the undertaking which culminated in Dr. Myrdal's 1500-page book.

"*Negro Housing* (1932), pp. 45, 46.

"The racial differential in housing accommodations for all income groups combined is enormous. . . . In Detroit 34 per cent of the Negro-occupied dwelling units were considered to be either unfit for use or in need of major repairs; the same proportion for white-occupied dwelling units was 6 per cent. The corresponding figures for Harrisburg, Pennsylvania, were 73 and 14 per cent, respectively. For Norfolk, Virginia, they were 25 and 5 per cent; for Savannah, Georgia, 55 and 11 per cent. . . . The differential is quite considerable in almost every place where there is an appreciable Negro population." Myrdal, *op. cit.* *supra* note 36, p. 378.

"While less than eight per cent of the dwelling units occupied by urban whites were overcrowded, almost 25 per cent of the units occupied by urban Negroes were overcrowded. . . . Congestion in Negro neighborhoods has reached a new high, and it is extracting unheard of economic and social costs. The situation has led to greater frustration of the hemmed-in inhabitants since a large number of them have, for the first time, enough money to pay for decent shelter. Residential segregation prevents them from getting it on equal terms with other Americans and looms as a permanent impediment for most of them." Robert C. Weaver, *Housing in a Democracy*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, March 1946, pp. 95-96.

"Robert E. Cushman, *The Laws of the Land*, 36 SURVEY GRAPHIC 14, 17, (1947).

"The restrictive covenant . . . has been popular, especially in the North. The exact extent of the use of the restrictive covenant has not been ascertained, but: 'in Chicago, it has been estimated that 80 per cent of the city is covered by such agreements . . .'" Myrdal, *op. cit.* *supra* note 36, p. 624.

"Myrdal, *op. cit.* *supra* note 36, p. 624.

and separate action" for that purpose.⁴⁰ In ruling that racial covenants are contrary to current public policy, a Canadian court relies in part on Canada's adherence to this Charter.⁴¹ America's adherence to this Charter, the adherence of other countries to it, and our American desire for international good will and cooperation cannot be neglected in any consideration of the public policy of preventing men from buying homes because they are Negroes. In many countries the color of a man's skin is little more important than the color of his hair and in many others the favored color is not white. In western Europe, to say nothing of other parts of the world, the position of Negroes in America is widely advertised and widely resented. "Any and all concessions to Negro rights in this phase of the history of the world will repay the nation many times, while any and all injustices inflicted upon him will be extremely costly."⁴² General Eisenhower has said that "enlightened self-interest demands the elimination of the unfair practices against large segments of mankind which, in the past, have so blackened the history of humanity."⁴³ The President of the United States has said: "We are living in a time of profound and swiftly moving change. We see colonial peoples moving toward their independence. It is a process that we, as Americans, can understand and sympathize with, since it parallels our own struggle for independence. We, as Americans, will want to supply guidance and help wherever we can. One way in which we can help is to set an example of a nation in which people of different backgrounds and different origins work peacefully and successfully alongside one another. . . . More and more we are learning, and in no small measure through the medium of the press, how closely our democracy is under observation. We are learning what loud echoes both our successes and our failures have in every corner of the world. That is one of the pressing reasons why we cannot afford failures. When we fail to live together in peace, the failure touches not us, as Americans, alone, but the cause of democracy itself. That we must never forget."⁴⁴

Suits like these, and the ghetto system they enforce, are among our conspicuous failures to live together in peace. In another such suit, this court recently argued that "if ever the two races are to meet upon mutually satisfactory ground, it cannot be through legal coercion. . . ."⁴⁵ This premise, instead of supporting the court's conclusion that racial restrictive covenants should be enforced by injunctions, is one more argument against it. The question in these cases is not whether law should punish racial discrimination, or even whether law should try to prevent racial discrimination, or whether law should interfere with it in any way. The question is whether law should affirmatively support and enforce racial discrimination. Appellants do not ask that appellees be forced to sell their houses. Appellees alone have come into court with a claim. They ask the court to take away appellants' homes by force because they are Negroes. There is no other issue in the case.

⁴⁰ Articles 55c, 56.

⁴¹ *Re Drummond Wrens* [1945] 4 D.L.R. 674 (Ontario High Court).

⁴² Myrdal, *op. cit. supra* note 36, p. 1015.

⁴³ *New York Times*, Feb. 24, 1947.

⁴⁴ Remarks of the President in making the Wendell Willkie Awards for Journalism; Press Release, Feb. 28, 1947.

⁴⁵ *Mays v. Burgess*, 79 U. S. App. D. C. 343, 347, 147 F. 2d 869.

[fol. 433]. [Stamp:] United States Court of Appeals for the District of Columbia. Filed May 26, 1947. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1947

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

April Term, 1947

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

Appeals from the District Court of the United States for the District of Columbia

Before Edgerton, Clark and Wilbur K. Miller, JJ.

JUDGMENT

These causes came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and were argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in these causes be, and the same is hereby, affirmed, with costs.

Per Mr. Justice Clark.

Dated May 26, 1947.

Dissenting opinion by Mr. Justice Edgerton.

[fol. 434] [Stamp:] United States Court of Appeals for
the District of Columbia. Filed Jun. 10, 1947. Joseph W.
Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA, JANUARY TERM, 1946

Nos. 9196 and 9197

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URGIOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

Motion for Rehearing filed on behalf of James M. Hurd
and Mary M. Hurd, No. 9196, and Robert H. Rowe and
Isabella J. Rowe, Herbert B. Savage and Georgia N. Sav-
age, Pauline B. Stewart, No. 9197.

Charles H. Houston, Spottswood W. Robinson, III,
615 F Street, Northwest, Attorneys for Appel-
lants-Movants.

[fol. 435]

MOTION FOR REHEARING

Appellants-movants James M. Hurd and Mary M. Hurd,
No. 9196, and Robert H. Rowe and Isabella J. Rowe, Her-
bert B. Savage and Georgia N. Savage, and Pauline B.
Stewart, No. 9197, move the Court to set aside its judgment
entered May 26, 1947, affirming the judgment of the Dis-
trict Court of the United States for the District of Colum-
bia in the above cases, granting an injunction against the
use and occupation of their properties by appellants and
voiding their deeds because of a perpetual race-hate re-
strictive covenant:

"Subject also to the covenants that said lot shall
never be rented, leased, sold, transferred or conveyed

unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2,000), which shall be a lien against said property."

and to grant a rehearing and reargument of said causes because the judgment of the Court and the majority opinion are erroneous in the following respects, among others to be pointed out in the reargument:

I

The judgment of the Court and the majority opinion misread and misinterpret the record in the case.

Before reaching the question of any disputed legal point, movants first call attention of the Court to the fact the judgment of the Court and majority opinion misread the record in the following decisive points:

A.) In stating the factual situation is the same as in *Mays v. Burgess*, 79 U. S. App. 343, 147 F. 2d 869, cert. denied 325 U. S. 868, rehearing denied 325 U. S. 896.

B.) In ascribing to these movants appellant Urciolo's repudiation of the "change of neighborhood" argument.

A

The Mays case involved property on First Street, Northwest (2213 First Street). The present cases involve properties on Bryant Street, Northwest, (Hurd, 116 Bryant Street; Rowe, 118 Bryant; Savage, 134 Bryant; Stewart, 150 Bryant). They do not face First Street, nor are they contiguous to First Street. They are separated by an alley from even the rear of the houses on First Street. This is not *Mays v. Burgess*; but cases even stronger than *Gospel Spreading Association v. Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878, where the property in question (101 "U" Street, Northwest) was corner property located both on First Street and U Street but fronting on U Street. The fact the *Gospel Spreading Association* case was a companion case to the Mays case, decided at the same time with [fol. 436] the Mays cases, lends added weight to the distinction.

All the testimony in the case establishes First Street as the dividing line between the white and Negro population. Even Henry K. Murphy, executive secretary of the white

Committee of Owners (Appdx. 70) admits that Mr. Murphy would have the white neighborhood bend a corner to the west and take in the twenty houses on Bryant Street (Appdx. 72); but let us repeat the facts from the record: West of First Street the neighborhood is solidly Negro; and this came about as a mass movement of the Negro population northward, until these twenty houses on Bryant Street are the last houses west of First Street for over a mile to the South occupied by non-Negroes. (See even the testimony of plaintiff Frederic E. Hodge, pp. 290, at 295-296, 298). The plat introduced in evidence shows no houses west of First Street, north after leaving Bryant; so that these twenty houses are a last drop before the area west of First Street takes on a solid dark hue.

Gospel Spreading Asso. v. Bennetts, *supra*. Making allowance then for Mr. Murphy's position, interest and bias, consider the testimony of experienced real estate men who know the neighborhood and who testify that First Street is the dividing line:

Edward L. Wills, pp. 259, at 266-267 (North Capitol Street, one street east of First Street, Northwest, the dividing line).

Thomas W. Parks, pp. 331, 333, 345.

The same testimony that First Street is the dividing line appears in the record of another case, docketed but never argued in this Court: Broadway v. Bishopp, No. 8232:

See there testimony over five years ago of the following real estate brokers: Patrick D. Holmes, (R. 150 at 151 and 160); Romeo W. Horad (R. 162 at 164-165); Thomas W. Parks (R. 168 at 171).

All the cases upholding restrictive covenants in this Court (except Corrigan v. Buckley, 55 App. D. C. 30) involve property on First Street, or east of First Street:

Torrey v. Wolf, 56 App. D. C. 4, 6 F. 2d 702;

Cornish v. O'Donoghue, 58 App. D. C. 359, 30 F. 2d 983;

Grady v. Garland, 67 App. D. C. 73, 89 F. 2d 817;

Mays v. Burgess, *supra*.

Except from the Gospel Spreading Association case, no case until the present cases were argued in this Court concerning the area west of First Street. The Negro migra-

tion was so irresistible that the Broadway case did not have [fol. 437] to be argued: the white owners abandoned their efforts to enforce the covenant.

Both *Hundley v. Gorewitz*, 77 App. D. C. 48, 132 F. 2d 23, and the Gospel Spreading Association case, *supra*, control these cases and require a reversal of the judgment below.

B

This Court cannot ascribe the individual position of appellant Raphael G. Urciolo, appearing *pro se*, in repudiating the change of neighborhood doctrine to the movants here. True all appellants filed a joint brief and a joint appendix, to minimize the terrible burden of a printing bill of more than \$1,200.00; but the change of neighborhood doctrine was extensively argued for these movants both in the brief and before the Court. To brush their arguments cavalierly aside by stating that appellant Urciolo repudiated the change of neighborhood argument does as much violence to the record, as the statement that the same area is involved in these cases as in *Mays v. Burgess*.

II

As a matter of law these cases require a reversal of the judgment below on the change of neighborhood doctrine.

Less than five years ago, this Court established¹ for this jurisdiction the doctrine that²

“ * * * since the purpose of such restrictions is the mutual benefit of the burdened properties, when it is shown that the neighborhood in question has so changed in its character and environment and in the uses to which the property therein may be put that the purpose of the covenant cannot be carried out, or that its enforcement would substantially lessen the value of the property, or, in short, that injunctive relief would not give a benefit but rather impose a hardship, the rule will not be enforced.

¹ *Hundley v. Gorowitz*, 77 App. D. C. 48, 132 F. 2d 23 (1942).

² 77 App. D. C. at 49.

"This exception to the rule is applicable in the case of a covenant such as we have here when, in the natural growth of a city, property originally constructed for residential purposes is abandoned for homes of more modern construction in more desirable locations, for a serious decline in values would follow unless the way was open either for use of the property for business purposes or for the housing needs of a lower income class. And it is also applicable where removals are caused by constant penetration into white neighborhoods of colored persons. For in such cases to enforce the restriction would be to create an unnatural barrier to civic development and thereby establish a virtually uninhabitable section of the city. Whenever, therefore, it is shown that the purpose of the restriction has been frustrated and that the result of enforcing it is to depreciate rather than to enhance the value of the property concerned, a court of equity ought not to interfere."

In refusing to enforce a restriction identical in terms with [fol. 438] that involved in the instant case in a factual situation not decidedly different from that presented here, it was pointed out that³

"Furthermore, apart from the market value of the property; which as we have seen, is not the only test, the present appellees are not now enjoying the advantages which the covenant sought to confer. The obvious purpose was to keep the neighborhood white. But the strict enforcement of all five covenants will not alter the fact that the purpose has been essentially defeated by the presence of a Negro family now living in an unrestricted house in the midst of the restricted group, and as well by the ownership by another Negro of a house almost directly across the street. And this is just the beginning."

It is difficult to conceive of a situation more appropriate for the application of these principles than that presented by these cases. The pertinent facts demonstrated by the record are set forth and considered in appellants' brief⁴

³77 App. D. C. at 50.

⁴PP. 6-11, 80-81, 83-88.

and do not need reiteration here. It will suffice to make reference to the change of the neighborhood involved from a community of native American white homeowners to an interracial hotchpotch; the change of the surrounding area to a solid Negro community; the unmistakable trend and inevitable migration of Negroes toward and into the restricted properties; the fact that enforcement of the restriction cannot establish a white neighborhood long since gone; the uncontadicted evidence that while refusal to enforce the restriction would peg and even enhance the values of the properties, their utter ruin would be the sole consequence of its enforcement; the untold hardship and irreparable damage to the appellants resulting from the injunction. As Mr. Justice Edgerton pointed out:⁵

"The covenants were intended to increase the value of the restricted property and to maintain a white neighborhood. The record shows that Negroes will pay more than whites for the property and that the neighborhood is no longer white. Enforcement of the covenants defeats their economic purpose and does not accomplish their other purpose. The rule of *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. 2d 23, therefore applies."

Nor, it is submitted, is *Mayes v. Burgess*⁶ controlling. In that case, there were no Negro occupants in the particular block in question, nor in the block adjacent thereto on the street in question in either direction, nor on the street in question for several blocks northwardly, and it was expressly found that the property in question was a part of a neighborhood, consisting of approximately one thousand homes, churches, and business properties exclusively occupied by whites. The situation here is entirely different.⁷ The properties here in question are not, as the majority opinion assumes,⁸ a part of the area involved in the *Mays* case. The 20 houses are the only houses left before the area west of First Street will be a solid Negro community. These houses are set off and separated from

⁵ Slip opinion, p. 6, footnote 11.

⁶ 79 App. D. C. 343, 147 F. 2d 869 (19—).

⁷ See references, footnote —, supra.

⁸ Slip opinion, pp. 2-3.

the First Street houses by an alley. They do not pertain to First Street but to the area west of First Street. In such circumstances, it would appear plain that the *Mays* case is distinguishable, and that the doctrine of the *Hundley* case is applicable.⁹

Further, the Court's opinion fails to consider to any extent whatsoever the fact that the record negatives the existence of any general neighborhood scheme of development or comprehensive building plan in the 100 block of Bryant Street which the restriction was designed to protect, (See testimony of plaintiffs Hodge (Appdx. 26-27, 291-292), the existence of an intention to benefit appellees' properties by the restriction imposed upon appellants' properties, and the fact of reliance by appellees upon the restriction.¹⁰

Notwithstanding the tremendous extension in modern law of the principles upon which the equitable enforcement of property restrictions rests, it is well settled that it was incumbent upon appellees to prove that the restriction upon appellants' properties was imposed with the intention of thereby benefiting appellees' properties,¹¹ and it is equally plain that the proof even failed to comply with standards requisite to a showing that appellees possessed the right to enforce the restriction in the first instance.¹²

In the state of the record in these cases, appellants' contentions in this regard cannot be disregarded unless the position of the Court be that enforcement is to follow automatically from the appearance of a segregation restriction upon property owned or occupied by Negroes, irrespective of the scope of its intended benefit and of the position of the plaintiffs. In this event, an unfortunate confusion in the land law in this jurisdiction arises from the contrary holding, of the District Court on the identical issue.¹³

⁹ *Gospel Spreading Association v. Bennetts*, 79 App. D. C. 352, 147 F. 2d 878 (194—).

¹⁰ Discussed in detail as Point V, Appellants' Brief, p. 64 *et seq.*

¹¹ Appellants' Brief, p. 64, *et seq.*

¹² Appellants' Brief, p. 70, *et seq.*

¹³ *Herb v. Gerstein* (D. C., D. C.), 41 F. Supp. 674 (1941), discussed Appellants' Brief, p. 69 *et seq.*

III

The injunction issued in these cases are broader than the covenant itself and constitute on any basis not judicial enforcement of an existing covenant but judicial legislation in the teeth of Buchanan v. Warley.

In this case, a judgment enjoining the vendee appellants [fol. 440] from doing something which the restriction leaves them free to do has been approved by the majority of this Court. In this brief, appellants called attention to the fact that only the ownership, but not the use or occupancy, of the properties in question by Negroes, was sought to be prohibited by the restriction involved, and that, therefore, the trial court erred in directing the Negro appellants to remove from their properties. As Mr. Justice Edgerton succinctly put it: ¹⁴

"The injunctions are broader than the covenants. The covenants are that the lots 'shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person . . .'. There is no covenant against use or occupation. The injunction not only set aside transfers but also order the colored appellants to 'remove themselves and all of their personal belongings from the land.' A covenant against rental, lease, sale, etc., is an entirely different thing from a covenant against use and occupation. This court has recently approved practically the same distinction which it now ignores. *Gospel Spreading Ass'n v. Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878."

This involves something more than judicial misconstruction; it presents a serious constitutional question independent of others initially involved on this appeal. The right of these parties to occupy the properties in question is valuable property protected by the guaranties of due process of the Fifth and Fourteenth Amendments,¹⁵ and the action of this Court in approving an injunction extending its prohibitions to acts entirely unprohibited by the proponents of the restriction is, in any view of the case, a taking of such

¹⁴ Slip opinion, p. 6, footnote 11.

¹⁵ See discussion, appellants' brief, pp. 54-55, 57-59.

property without due process of law, within the meaning of the constitutional provisions.

Suppose for the purpose of the argument, assumption is made that confining itself to the traditional judicial function of enforcement of existing covenants the Court be held empowered to enjoin the rental, lease, sale, transfer or conveyance of the properties to Negroes, the most the Court can do is to void the deeds in question and leave the Negroes on the properties as tenants by sufferance, or even trespassers. When it does more and orders them evicted, the Court becomes a self-constituted legislature creating rights and duties theretofore non-existent, unconstitutional and directly in the teeth of *Buchanan v. Warley*, 245 U. S. 60, 38 S. Ct. 16, 62 L. ed. 149.

IV

Enforcement of these race-hate restrictive covenants is against the public policy of the United States.

[fol. 441] Appellants do not elaborate on the discussion of this point in the dissenting opinion of Mr. Justice Edgerton. For anyone seriously concerned about the future welfare and international position of this country, the propositions set forth in that opinion would be convincing. The point is raised here in reargument because it will not down, because international events press us on to the day when internal race prejudice may be the rock upon which the good will of other peoples for this nation will be lost. If the majority justices could only sense the resentment of the diplomatic corps members who do not look like white to the prejudices and discriminations prevalent in this capital city of democracy, they would outlaw restrictive covenants, instead of piling up the legacy of hatred and oppression which they may escape but which their children and their children's children will have to pay, even as the blood drawn by the lash in slavery was paid for by blood shed in the holocaust of the Civil War.

V

Movants resubmit their brief and all points made in it in support of this motion.

Respectfully submitted, Charles H. Houston, Spottswood W. Robinson, III, attorneys for movants.

Service accepted: (S.) Henry Gilligan, attorney for appellees.

[fol. 442] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jun. 12, 1947. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1946

Nos. 9196 and 9197

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

ANSWER OPPOSING REHEARING

Answering Paragraphs 1—A and B of the Motion

The majority opinion of the Court accurately and clearly covers the factual situation; the record was not in any particular misread or misinterpreted by the Court. In the Gospel Spreading Association v. Bennetts case, 70 U. S. App. D. C. 352, 147 F. 2d 878, the property in suit was 101 U Street, N. W.; the Court found it to be a U Street property, every other property on the block, with one exception, being owned and occupied by Negroes, including a Negro church at the corner of U and Second Streets.

The Motion misstates the evidence of Henry K. Murphy. In answer to the following question of Mr. Houston (P. 72, Record):

Q. First Street has usually been considered the dividing line between the white and the negro population, has it not?

Mr. Murphy answered: "Up as far as Bryant Street, and the white population extends on Bryant Street west from First Street about two-thirds of the distance to Second."

The real estate witnesses on this point, namely: Wills, Parks and Horad, are all Negroes.

[fol. 443] Paragraph II of the Motion is merely a restatement of the arguments presented to the Court on November 21, 1946.

Paragraph III of the Motion reiterates the contentions of Appellants' Brief and arguments made at the hearing. The identical deed covenant in suit has been upheld by this Court, as in this case, in

Torrey v. Wolfes, 56 App. D. C. 4; 6 F. (2d) 702

Cornish v. O'Donoghue, 58 App. D. C. 359; 30 F. (2d)

983. Certiorari denied 279 U. S. 871

Grady v. Garland, 67 App. D. C. 73; 89 F. (2d) 817.

The case of Buchanan v. Warley, 245 U. S. 60, cited at the end of Paragraph III, was based entirely on State and Municipal legislation, and is not pertinent to the issues in this case.

Every case on the subject of public policy, passed on by this Court, clearly negatives the contention of Paragraph IV of the Motion as to the public policy of the United States or of the District of Columbia. See Mays v. Burgess, 79 U. S. App. D. C. 343, under headings 6-8, for a comprehensive statement. Quoting briefly: "The public policy of a State of which courts take notice and to which they give effect . . . may, not—properly—be found in our personal views on sociological problems." The covenant is not a "race-hating" restrictive covenant, as charged, except as appellants and their attorneys make them such.

The Motion should be denied.

Respectfully, Henry Gilligan, Attorney for Appellees.

June 12, 1947.

Service of copy admitted: 6/12/1947 mailed, postpaid, to Raphael G. Urciolo, pro se. Charles H. Houston, Attorney for all other Appellants.

[fol. 444] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jun. 16, 1947. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1946

Nos. 9196 and 9197

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URICIOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

Affidavits in Support of Motion for Rehearing Showing Changes in Property Ownership Since Trial of Case

Charles H. Houston, Spottswood W. Robinson, III,
615 F Street, Northwest, Attorneys for Appellants-Movants.

[fol. 445] Affidavits in Support of Motion for Rehearing Showing Changes in Property Ownership Since Trial of Case

Appellants-movants James M. Hurd and Mary M. Hurd, No. 9196, and Robert H. Rowe and Isabella J. Rowe, Herbert B. Savage and Georgia N. Savage, and Pauline B. Stewart, No. 9197, under the authority of *Hundley vs. Gorwitz*, 77 U. S. App. 48, p. 49, filed the attached affidavits showing changes in property ownership and occupancy among the twenty covenanted houses in the 100 block of Bryant Street, Northwest, which have occurred since the case was tried in the District Court of the United States as further evidence of the change in the character of the neighborhood. They note that the property of Francis M. Lanigan, one of the original plaintiffs, has been sold; like-

wise, the property of Marchegiani. Nine out of the twenty covenanted houses in the 100 block of Bryant Street, Northwest, are owned and occupied by Negroes or by white persons who desire to have the covenant removed. Seven of these nine houses are owned and occupied by Negroes, making eighteen houses out of thirty-one in the block now owned and occupied by Negroes. And in the language of *Hundley vs. Gorwitz* at page 50:

"And this is just the beginning."

Appellants-movants pray that these affidavits may be considered in support of their motion for rehearing heretofore filed.

Respectfully submitted, Charles H. Houston, Spottswood W. Robinson, III, Attorneys for Movants.

Service accepted: Henry Gilligan, Attorney for Appellees.

June 16th, 1947.

[fol. 446] IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF CHARLES E. RUSSELL

City of Washington, District of Columbia, to wit:

Charles E. Russell, being first duly sworn, upon oath deposes and says:

That he is owner of record with his wife, Mary Russell, as tenants by the entirety, of Lot 111 in Square 3125 with

improvements thereon known as 122 Bryant Street, Northwest.

That this property was formerly owned by Francis M. Lanigan, one of the original plaintiffs in the above entitled cause.

That he is a member of the white race.

4 That he is and has been unwilling to bring any action, or to join in any action to enforce the racial covenant upon the properties in the block wherein his house is located.

That he and his wife have occupied the premises they own since taking title thereto.

(S.) Charles E. Russell.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 447] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF VERNON H. NELSON AND JULIA A. NELSON

Washington, District of Columbia:

Vernon H. Nelson and Julia A. Nelson, being first duly sworn, upon oath depose and say:

That they are owners of record, jointly with William L. Nelson, of Lot 110 in Square 3125 with improvements thereon known as 124 Bryant Street, Northwest; and they now occupy said premises.

That this property was formerly owned by Constantino Marchegiani and Mary M. Marchegiani, two of the original plaintiffs in the above entitled cause.

That, as owners, they are not only unwilling to have the racial covenant enforced but also prefer to have said covenant erased from the record.

(S.) Vernon H. Nelson, Julia A. Nelson.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 448] IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF RALPH MILONE

Washington, District of Columbia, to wit:

Ralph Milone, being first duly sworn, upon oath deposes and says:

That he is the present owner of record of Lot 141 in Square No. 3125 with improvements thereon known as 140 Bryant St., N. W.

That this property was formerly owned by Helen E. Pyles, one of the original plaintiffs in the above entitled cause.

That he is a member of the white race.

That he is not only unwilling to have the racial covenant enforced but also prefers to have said covenant erased from the record.

Further the deponent sayeth not.

(S.) Ralph Milone.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 449] IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF AUGUSTUS M. WILLIAMS AND BEATRICE
WILLIAMS

City of Washington, District of Columbia, to wit:

Augustus M. Williams and Beatrice Williams, being duly sworn, upon oath depose and say:

That they are the present owners of record of Lot 109 in Square 3125 with improvements thereon known as 126 Bryant Street, Northwest.

That they now occupy said premises.

That they, as owners, are not only unwilling to have the racial covenant enforced, but also prefer to have said covenant erased from the record.

(S.) Augustus M. Williams, Beatrice Williams.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 450] IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF JOHN ASKEW

City of Washington, District of Columbia, to wit:

John Askew, being first duly sworn, upon oath deposes and says:

That he is the present owner of record of Lot 139 in Square 3125 with improvements thereon known as 144 Bryant Street, N. W.

That he now occupies said premises with his family.

That he, as owner, is not only unwilling to have the racial covenant enforced, but also prefers to have said covenant erased from the record.

(S.) John Askew.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 451] [Stamp:] United States Court of Appeals for
the District of Columbia. Filed June 18, 1947. Joseph
W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA—JANUARY TERM, 1946

Nos. 9196 and 9197

No. 9196

JAMES M. HURD, et al, Appellants,

vs.

FREDERIC E. HODGE, et al, Appellees

No. 9197

RAPHAEL G. URCILOLO, et al, Appellants,

vs.

FREDERIC E. HODGE, et al, Appellees

ANSWER TO AFFIDAVITS IN SUPPORT OF MOTION FOR REHEARING

Florence E. Urciolo, wife of the defendant, Raphael G. Urciolo, and a "straw" for him (R. P. 12) made the following conveyances After the Judgment for Injunction, rendered on December 10th, 1945:

To affiants Augustus M. & Beatrice Williams, on March 21, 1946, Instrument number 11244, recorded in Liber 8236, folio 466, of the Land Records of the District of Columbia; Lot 109, Square 3125;

To John Askew on November 20, 1946, Instrument No. 52352 of said Land Records; Lot 139, Square 3125; not yet copied into the records.

To Vernon H. Nelson, Julia A. Nelson, his wife, and William L. Nelson on July 24, 1946, Instrument No. 32385, recorded in Liber 8307, folio 140 of said Land Records.

No conveyances to the affiants Charles E. Russell and Mary Russell of Lot 111, Square 3125; nor of Lot 141, Square 3125 to Ralph Milone appear of record as of June 16th, 1947.

The Injunction granted by the District Court of the United States and affirmed by this Court includes Lots 109

and 139, Square 3125. In direct violation of this Injunction [fol. 452] the said appellee, Raphael G. Urciolo, caused his "straw" party to make the conveyances of these two lots to Negroes, and he is, accordingly, in contempt of the Courts, both the District Court and this Court of Appeals. The Negro appellants have the effrontery, through Counsel, to file these affidavits in support of a Motion for Rehearing, carefully refraining from disclosing to the Court the fact that three of the affidavits are made by Negroes; all holding in violation of the covenant and three of the affiants in violation of the Injunction issued in the case at issue. The other two affiants claim to be persons of the white race. Counsel for appellees assures this Court that Contempt proceedings will be brought against appellant Raphael G. Urciolo and Florence E. Urciolo, his wife and "straw" in due course, in the District Court of the United States for the District of Columbia.

The affidavits submitted most clearly disclose to the Court the lengths to which appellants will go to discredit and nullify the Injunction issued by the lower Court and upheld by this Court.

Respectfully submitted, Henry Gilligan, Attorney for
Appellees, 626 Washington Loan & Trust Bldg.

June 18, 1947.

Service acknowledged on original.

[fol. 453] [Stamp:] United States Court of Appeals for
the District of Columbia. Filed June 23, 1947. Joseph
W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA—APRIL TERM, 1947

No. 9196

JOSEPH M. HURD, et al., Appellants,

v.

FREDERIC E. HODGE, et al., Appellees

No. 9197

April Term, 1947

RAPHAEL G. URCILOLO, et al., Appellants,

v.

FREDERIC E. HODGE, et al., Appellees

Before Edgerton, Clark and Wilbur K. Miller, JJ.

ORDER

On consideration of motion for rehearing by appellants
James M. Hurd and Mary M. Hurd in No. 9196, and appel-
lants Robert H. Rowe, Isabella J. Rowe, Herbert B. Savage,
Georgia N. Savage, and Pauline B. Stewart in No. 9197, and
of the answer of appellees, the affidavits in support of the
motion, and of appellees' answer to said affidavits, and on
consideration of the motion of appellant Raphael G. Urciolo
in No. 9197 for rehearing, it is

Ordered by the court that the motions for rehearing be,
and they are hereby, denied.

Per Curiam.

Dated June 23, 1947.

[fol. 454] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jul. 2, 1947. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 9196

JOSEPH M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix to briefs.
2. Opinion, as corrected.
3. Judgment.
4. Motions for rehearing and supporting affidavits.
5. Answer to affidavits in support of motions for rehearing.
6. Order denying motion for rehearing.
7. This designation.
8. Clerk's certificate.

Raphael G. Urciolo, pro se; Charles H. Houston, Attorney for Appellants, Except Urciolo.

Service Accepted: Henry Gilligan, Attorney for Appellees.

[fol. 455] [Stamp:] United States Court of Appeals for
the District of Columbia. Filed Jul: 17, 1947. Joseph W.
Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA

No. 9196

JOSEPH M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

DESIGNATION FOR APPELLEES OF ADDITIONAL PORTIONS OF
RECORD

Appellees designate the following matter to be designated
in the record for use on petition for writ of certiorari, in
addition to the matters designated by the appellants:

1. Answer opposing rehearing.
2. This designation.

Henry Gilligan, by James A. Crooks, Attorneys for
Appellees.

Service of copy admitted: — — —, Attorney for Appel-
lants, except Urciolo.

Copy mailed, postpaid, July 17th, 1947, to Raphael G.
Urciolo, pro se, to 907 New York Avenue, N. W., Wash-
ington, D. C.

James A. Crooks.

[fol. 456] UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 455, both inclusive, constitute a true copy of the joint appendices to the briefs of the parties and the proceedings of the said Court of Appeals as designated by counsel for appellants and for appellees in the cases of No. 9196, Joseph M. Hurd, et al., Appellants, vs. Frederic E. Hodge, et al., Appellees. No. 9197, Raphael G. Urciolo, et al., Appellants, vs. Frederic E. Hodge, et al., Appellees April Term, 1947, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this eighteenth day of July, A. D. 1947.

Joseph W. Stewart, Clerk of the United States Court
of Appeals for the District of Columbia. (Seal.)

(1741)

[fol. 457] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1947

No. 290

ORDER ALLOWING CERTIORARI—Filed October 20, 1947

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is assigned for argument immediately following No. 87, McGhee et al. vs. Sipes et al.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 458] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1947

No. 291

ORDER ALLOWING CERTIORARI—Filed October 20, 1947

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is assigned for argument immediately following No. 87 and 290.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3328)